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# CRIME AND THE CRIMINAL

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CRIME AND  
THE CRIMINAL



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# CRIME AND THE CRIMINAL

AN INTRODUCTION TO  
CRIMINOLOGY

BY PHILIP ARCHIBALD PARSONS, PH.D.

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and Professor of Applied Sociology,  
University of Oregon*



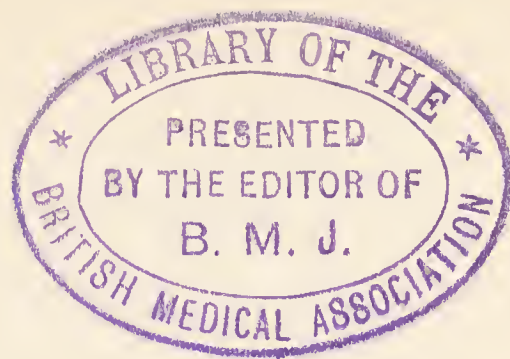
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## PREFACE

Ever since the publication of my *Responsibility for Crime* in 1909, as a dissertation in the *Columbia University Series in History, Economics, and Public Law*, I have entertained a desire to produce a revision of that very fragmentary work. In fact, I was so dissatisfied with it at the time that the Preface was made to carry an announcement of my intention to produce a revision at an early date. The years slipped by, and for one reason and another the preparation of the second edition was postponed until the time came when a revision was impractical, and the situation seemed to require an entirely new work if the project were not to be abandoned altogether.

Almost every year since 1909, and sometimes several times during the year, I have given a course in *Criminology* to many types of students in Syracuse University and in the University of Oregon in regular college classes, summer sessions, extension classes, and in the training classes of the Portland School of Social Work. Much of that time the work was somewhat hampered by the absence of what seemed to me a satisfactory textbook on the subject. The shifting character of the ground of criminology rendered several good books obsolete during that time. Quite recently the works of Sutherland and Gillin have met admirably the need for a source-book in the subject. During the period an abundance of periodical literature has accumulated and not a few good books have appeared which are of interest to the lay reader as well as to the college student.

Practically ever since 1909 I have been engaged, to a greater or less extent, in some form of social service in which I have been constantly faced with the need of getting a body of highly significant information about crime and criminals, and especially about our unsuccessful methods of dealing with them,

before the public as well as college students. The development of the science of criminology in the last few years seems to indicate that the time is ripe to present the more significant facts of the crime situation in a single volume designed to meet the needs of layman and college student alike. My efforts to produce such a work appear in this book. The desire to meet two demands in a single work is responsible for the preservation in the volume of much material which has been omitted from very recent and much more comprehensive works. I have felt that order could not be brought out of the present chaos in the popular mind unless the development of criminal theory, theological, speculative, and scientific, were brought in review in order to account for the shreds of each of these types of thought which are woven into the fabric of popular thinking on this subject.

For the layman, I have endeavored to present the material in a non-technical, narrative style as free as possible from academic discussions and terminology. For the student in college or other classes, I have tried to make up for the absence of these by constant reference to the abundant literature of the subject. Fortunately the recent works of Sutherland and Gillin have presented a great amount of source material in single volumes. I have drawn heavily upon Dr. Sutherland's *Criminology* for illustrative purposes. Dr. Gillin's still more extended work of a similar character on *Criminology and Penology* appeared while this work was in proof, too late for me to take advantage of a great amount of excellent new matter which it contains, but in time to include references to it in the selected readings at the ends of the chapters. My great indebtedness to these and to many other writers is hereby gratefully acknowledged.

My special thanks are due to Professor Harry Elmer Barnes, of Smith College, for invaluable assistance in this enterprise at many times and in many ways, including the free privilege of drawing heavily upon his numerous valuable works. I take



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this opportunity to acknowledge, also, my indebtedness to Dr. Lorine Pruette Fryer, of New York City, for valuable assistance in the preparation of the manuscript, and to Professor Ralph P. Holben, of Dartmouth College, for a critical and very helpful reading of the proofs.

Needless to say, I have received constant assistance from my wife in sympathetic encouragement throughout the time when the manuscript was in preparation and recently in the technical and burdensome work of getting the finished matter to the printer.

My interest in crime and criminals was first awakened and greatly stimulated by the class-room instruction of Professor Franklin H. Giddings, of Columbia University. This was one of very many ways in which that great scholar and teacher contrived to put me forever in his debt. I have endeavored to repay a very small part of my great obligation by dedicating this volume to him.

PHILIP A. PARSONS.

University of Oregon  
May 1926.



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PART I

THE CRIMINAL



# I

## THE QUESTION OF THE CRIMINAL

### I. NATURE OF THE PROBLEM

ONE of the gravest problems confronting civilization is the question of the criminal.

There are many social problems before society, some of which are much more conspicuous than others. In consequence they receive more consideration. However, the attention given to a social problem is no index of its importance. In fact, some of the more obscure constitute menaces to society much more grave than others about which there is considerable agitation. Although society from time to time gives a reluctant consideration to the problems of crime and the criminal, the gravity of these problems far transcends the attention they receive.

In gauging the relative importance of social problems, several factors must be taken into consideration. One of these is the relation of the problem to life and happiness. Another is its economic significance. A third, and often neglected aspect, is the relation of the problem to social progress. On all three counts the question of the criminal deserves careful attention. The criminal is a menace to life and happiness. He imposes financial burdens upon society and is himself an economic liability. He is a great obstacle in the way of social progress and is a striking example of social inefficiency.

Gratifying progress is being made in many departments of social work, notably in connection with health and child welfare, but procedure in dealing with crime has not advanced to any comparative degree. By and large, American communities

continue to follow the futile and traditional procedures of another day, in spite of the enormous amount of information relative to the nature and causes of crime which has been accumulated in the last few decades.

Notable progress has been made in the theory of criminal science and criminologists are agreed upon many points of importance.<sup>1</sup> However, with the exception of a few communities, we find little tendency to put into practice the discoveries of scientific workers in the field of criminology. This failure is particularly impressive when we consider methods of social protection and the adequate treatment of the offender who has fallen into the hands of the law.

Modern society already is in possession of sufficient knowledge in respect to crime to warrant sweeping changes in our present procedure. However, such knowledge is not widely disseminated and there appears little likelihood that it will be put to any immediate use. The popularization of such knowledge becomes, then, as important for those interested in improving our present technique in dealing with the criminal as is continued research. We have the knowledge to improve conditions, but we have not yet developed the will to make such improvements.

The selection of the persons whose duty it is to deal directly with the crime problem is still largely unstandardized. Until society has learned the nature of the problem and has become accustomed to thinking of crime and criminals without the conventional emotional attitudes it will never countenance the employment of the specialists needed for a scientific handling of the situation.

It has become increasingly necessary to disseminate our present knowledge of criminal science and to bring the social group to a new awareness of the problem. There is no reason why courses in criminology should not be considered an essential part of the cultural education of every citizen. Books and

<sup>1</sup> See H. E. Barnes: "Some Leading Phases of the Evolution of Modern Penology," in *Political Science Quarterly*, June, 1922.



pamphlets written in popular fashion should also be used for spreading the desirable information. We shall make little progress toward intelligent treatment of crime and criminals until more persons understand the present theories and attitudes of the research workers in the field. Without in any way slackening our quest for additional knowledge, we must accept the necessity of distributing widely such information as we have at present.

## II. EMOTIONAL REACTIONS TO CRIME

A fundamental reason for the need of disseminating information concerning the nature and causes of crime is found in the lingering *fear* of the criminal. This is accompanied in social thinking by the emotional reactions of hostility, vengeance and self-protection. The realization that anti-social and dangerous persons are at large in the community, their continued evasion of the police, the frequent occurrence of crimes of a serious or revolting character for which no one is apprehended, all combine to create a feeling of apprehension which is in the background of consciousness for most of us, and which may in special cases develop into terror and even hysterical manifestations.

The natural result of such a condition is that the whole subject of crime is kept in the realm of emotion. Treatment of the criminal remains, in spite of all safeguards and legal technicalities, emotional to a high degree. Just as the necessity of self-defense and the urge to vengeance led our primitive ancestors to violent reprisals, our emotional attitude leads us to a vindictive treatment of offenders who have committed crimes arousing public feeling. We cry out for vengeance in the more refined terms of justice and retribution. In cases where details of a particularly revolting crime, such as the Frank murder, are sent broadcast over the country by the press, there develops a great clamor for blood revenge. As long as such an emotional state prevails it is impossible to se-

cure a rational consideration of the matter. On the other hand, the emotional attitude toward crime may make the Public susceptible to special pleading, the tears of a gray-haired mother, the presence of wife or child in the court-room, and, long after the revolting and vengeance-arousing details of the crime have been forgotten by the public, sympathy for the offender may be stimulated and his release effected by resort to some one of the many familiar devices for defeating justice.

As for the mass of petty crimes which do not attract the attention of the public, these are ground through the mill of legal procedure with little consideration either for social protection or for the individual condition of the offenders.

Perhaps we shall never be able to eliminate fear and the desire for vengeance entirely from the crime situation, but we should be able at least to eliminate these emotional attitudes as dominant factors in our treatment of the criminal. Success achieved in overcoming fear and hatred of the insane, resulting in the modern scientific treatment of these unfortunates, encourages us to hope that we may be able some day to deal as rationally with our criminals. However, that day will not come until available information as to the nature of crime and criminals has been far more widely disseminated than at present. Fear tends to disappear with the dispelling of ignorance. Along with it should go much of the desire for vengeance.

### III. THE FINANCIAL BURDEN OF CRIME

In a civilization dominated as much as ours is by economic considerations, the financial burden of crime would seem to demand a more intelligent treatment of the subject, if there were no other reason. Without attempting to go into all of the ways in which society suffers as a result of criminal behavior which might be estimated in terms of money, we get rather startling results from the summing up of the most obvious losses due to the depredations of criminals and our efforts at repression and self-protection.



Various estimates have been made of the money losses from certain forms of theft. Many of these carry considerable weight of authority. Of course, no accurate figure is available. The cost of thievery to transportation companies has been estimated for 1922 at \$100,000,000. During the same year it is asserted that swindles in the United States netted their perpetrators \$600,000,000. The estimate of the National Surety Company places the losses in this country annually from stock and land frauds and confidence games at two billion dollars and the combined takings of various thieves, embezzlers, fraudulent bankrupts, swindlers, forgers, etc., at nearly a billion more.<sup>2</sup> These estimates do not include political graft and bribery, for which the sums involved are incalculable.

Efforts at repression include activities of the police, defensive and offensive, all the machinery and personnel of criminal procedure and the colossal burden of jails, reformatories and prisons with their army of wardens, guards, clerks, etc. To these must be added the activities of other law-enforcement bodies such as fish and game commissioners, prohibition officers, factory inspectors and a host of others. The costs to society involved here are a legitimate charge against crime.

To the above must be added all private efforts to secure ourselves and our property against criminals. From the simplest items such as locks and doors to the elaborate safety vaults of financial institutions, we pass through a maze of protective devices to which we must add personal factors such as private guards, watchmen, etc. Against the failure of these we resort to insurance for which premiums of nineteen insurance companies amounted to \$13,500,000 in 1919.<sup>3</sup>

The gross costs to society from all of these sources have been variously estimated. Figures for 1900 and for 1910 range from Smith's estimate of six billion dollars for the earlier date, to

<sup>2</sup> This and much more interesting data will be found in the *Jour. Crim. Law*, Aug., 1923, p. 318, and in C. F. Carter, "The Carnival of Crime in the United States," in *Current History*, Feb. 1922. A summary of this and other material will be found in E. H. Sutherland, *Criminology*, pp. 65-68.

<sup>3</sup> E. H. Sutherland, *op. cit.*, p. 67.

Spalding's estimate of two billion for the latter year. More recent estimates have placed the figures at five and six billion annually.<sup>4</sup>

Commenting on these figures, Sutherland writes, "Little dependence can be placed on any of these, but it seems probable, in view of the large number of items to be included and the immense losses that are known, that the highest of these is not too high."<sup>5</sup> Since one of the highest estimates places the annual cost of education at nearly two billion dollars,<sup>6</sup> we are here considering a drain upon the resources of the nation probably not less than three times as great. As fully half of this staggering sum is pure loss and little of the remainder can be credited to activity which could be considered socially constructive, we would seem to be contemplating in crime a social problem which demands immediate and intelligent consideration.

#### IV. PRESENT METHODS OF TREATMENT FUTILE

An additional reason why greater attention should be given to the crime problem lies in the fact that much, if not the greater part, of the effort put forth in the repression of crime is futile. Leaving aside for the present the consideration as to the increase of crime, which seems to be in doubt,<sup>7</sup> it is enough to establish the fact that it is not decreasing. Nor is there much in the crime situation which would lead us to believe that there is any prospect of improvement as long as prevailing methods are continued, especially in the matter of adult crime. Encouraging results are being realized in the juvenile field where scientific methods are being adopted. Only here and there, how-

<sup>4</sup> E. Smith, "The Costs of Crime," *Proced. Nat. Prison Assoc.*, 1900, pp. 308-325. W. F. Spalding, "The Money Cost of Crime," *Jour. Crim. Law*, May, 1910, pp. 86-102. E. H. Sutherland, *op. cit.*, p. 68.

<sup>5</sup> *Op. cit.* p. 68.

<sup>6</sup> W. F. Spalding, *op. cit.*

<sup>7</sup> M. Parmelee, *Criminology*, pp. 121-124, and E. H. Sutherland, *op. cit.*, chap. II,



ever, is there an indication that antiquated methods are being abandoned in favor of scientific procedure in dealing with adults.

Not only is crime not decreasing but the public is not being protected from the depredations of criminals. Occasionally an amateur criminal is caught and punished for his first offense; perhaps half of the persons in prisons at a given time are single offenders; but every person who has had a long contact with criminals knows that the greater part of crime is committed by rogues who are punished for only a small percentage of the crimes which they commit.<sup>8</sup> Sooner or later, and it may be several times, they fall into the hands of the law, but this does not prevent them from perpetrating a large number of offenses for which they are never arrested.

Richard Washburn Child<sup>9</sup> feels that we are now headed "not for more law enforcement, but for less; not for less crime,—but for more." In the belief "that no existing agency of law enforcement and none of the detailed studies or analyses made of our wretched record in unpunished crime had proved effective in stopping a condition, not only humiliating, but also menacing to our national stability," he has made himself the spokesman for a nation-wide campaign for suppression of crime and has attempted, after extensive investigation of certain aspects of law enforcement to "awaken American citizenship to an emergency, to seek and set forth, though the task was by no means agreeable, the main truth as to the criminal's paradise we have tolerated in America and a route map of the immediate steps good citizenship will take when it determines to end the scandal."

In spite of all that has been said and done about reformation of criminals, the fact remains that few real addicts abandon their criminal careers because of their experience with the courts or penal machinery. More often society's attitude toward and treatment of offenders make it difficult for a criminal

<sup>8</sup> G. G. Henderson, *Keys to Crookdom*.

<sup>9</sup> Child, R. W.: *Battling the Criminal*, Doubleday, Page and Co., 1925.

to return to an honest life even when he makes a determined effort to do so. After twenty years of earnest effort to reform prisoners, Thomas Mott Osborne is convinced that our prisons are breeding places of crime.<sup>10</sup> Not only does much of our penal machinery fail to accomplish desired results but it becomes one of the chief factors in perpetuating a condition it was designed to correct.

#### V. MUCH PROCEDURE STUPID

We seem warranted in making certain deductions after contemplating crime conditions in America. Either we are incapable of handling the crime problem with the degree of efficiency secured in certain European states, especially England, due, perhaps, to complexities in our situation not found there; or we are content to perpetuate antiquated methods which are not infrequently stupid. Certainly much of our activity in connection with crime is a severe reflection upon our intelligence and entitles us to be the laughing stock of nations which are more progressive in this matter. Two or three illustrations will suffice here.

Our perpetuation of the solemn effort to secure justice by the use of a jury has long been held up to ridicule.<sup>11</sup> It is a well known fact that this device as frequently as not serves to defeat justice. It also fails to protect society in the case of many a criminal whose guilt is a foregone conclusion. A notorious criminal caught in the act or with the plunder in his possession may plead not guilty, be given bail, employ crafty defense and secure a verdict of not guilty from a jury of apparently intelligent men and women. The skillful attorney who can distort facts and secure an acquittal for a guilty client

<sup>10</sup> T. M. Osborne, *Prisons and Common Sense*.

<sup>11</sup> E. Ferri, *Criminal Sociology*, Pt. II, chap. III; M. Parmelee, *The Principles of Anthropology and Sociology in their Relation to Criminal Procedure*, chaps. IX, X; P. A. Parsons, *Responsibility for Crime*, chap. VIII; and H. E. Barnes, "Trial by Jury," *American Mercury*, Dec. 1924.



does not lose caste with his colleagues and is considered as a distinguished and influential member of society.

The continued use of the short-term jail or prison sentence as a means of punishment, in the face of its universal condemnation as a futile method for either the reformation of the offender or the protection of society, is an indication of the bankruptcy of American communities in the matter of expediency. This puts us in the position of going through a process because something has to be done but with little hope of accomplishing anything by it. In addition, we must plead guilty to the indictment that by so doing we allow our penal machinery to contribute to the process of criminal making.

In an effort to get away from the evils of the prison system, we have resorted to the pardon, parole and conditional liberation. The abuse of these in many instances makes a mockery of punishment and annually liberates a horde of hardened offenders to prey upon society for a time before they are apprehended and returned to confinement.<sup>12</sup> Even a sentence to life imprisonment becomes a mockery. Persons sentenced to life imprisonment are more apt to be released than they are to die in prison. This seems to indicate that we are working at cross purposes, rendering both our traditional procedure and our attempted remedies abortive. Intelligent persons who are familiar with the situation concede this but assert that present methods are perpetuated *for want of better ones*. This seems to concede the point that the outstanding problem in the field of crime is to devise a more adequate system to supplant the present one which is admittedly bad.

## VI. THE CHARACTER OF INSTITUTIONS

All persons who are familiar with the nature of the institutions which society has constructed for dealing with its problems know the difficulties attending efforts to alter or abandon

<sup>12</sup> B. Glueck, "A Study of 608 Admissions to Sing Sing Prison," *Mental Hygiene*, January 1918.

them in favor of better ones. We need mention only a few of them here.

1. *Function.* Institutions come into being to meet certain social needs, or, in other words, to do certain necessary work. The need of an institution is continuous. It cannot be suspended while new machinery is being devised to do it. Therefore, we are faced with the necessity of perpetuating inadequate machinery until better is available.

2. *Momentum.* After institutions have been developed and have been in existence for a long time they acquire certain characteristics and conditions which make it difficult to change them. Of these we need mention only a few. First there is the force of habit. We continue to do things in certain ways long after those ways are inadequate, many times for no other reason than that this is the way we always have done. With this should be considered aversion to change and to new things, especially in matters involving the feelings or emotion. To these must be added several of the following topics which, partaking of the nature of momentum, require separate consideration.

3. *Tradition.* Certain ideas which have their roots far back in the history of the culture, and beyond, become imbedded in the complex of the institution. In connection with crime some of these are the divine law, retribution, justice, responsibility, free will, personal rights, etc. Long after the nexus of these ideas with the crime complex has been forgotten they persist as reasons for perpetuating the *status quo*. Unfortunately they are not open to direct attack by a rational process for the reason that they assume certain religious aspects while proposals for change take on some of the characteristics of heresy. Education, slow and laborious, is the only remedy.

4. *Personnel.* In a volume on conditions in English reformatories a recent writer finds one of the great obstacles to reform in the persons who live by the present system.<sup>13</sup> In justice to many persons dealing with crime, careful discrimination is due at this point. Many men engaged in the various

<sup>13</sup> I. G. Briggs, *Reformatory Reform*, Preface, p. x.



branches of criminal procedure, including police, judges, attorneys, probation officers, parole officers, superintendents of reformatories and wardens of prisons and penitentiaries are honestly convinced that the present system is adequate, or at least can be made adequate with a little tinkering. They are inclined to look upon the advocates of reform as theorists who get their ideas from books and the scientific experiments of educators and faddists. These persons are usually highly esteemed by the public.

On the other hand, there is a host of persons engaged in work with criminals who by reason of ignorance or inefficiency would be replaced by skilled operators in a more adequate system. To most of these people it is a matter of a job. Naturally they defend the existing régime.

In view of the fact that quite generally the police, the courts and penal machinery are almost inextricably linked with politics, it goes without saying that a powerful opposition to reform arises from political sources.

5. *Machinery.* When once an institution has equipped itself with physical property,—in this case jails, prisons, reformatories, etc.,—it has entrenched itself to withstand the assaults of reform long after its inadequacy has become apparent to the more intelligent portion of the population. The inertia created by the unwillingness to abandon physical property is as stubborn if not more stubborn than that of traditional ideas and methods.

6. *Costs of reform.* Perhaps the most immediate obstacle in the way of adopting many reforms which are obviously desirable is the item of costs. These include losses which would be incurred by the abandonment of methods or machinery in operation, the additional costs of improved methods, or the enormous expense involved in the provision of an adequate system of treatment. Even though any or all of these may be first costs, to be offset by later savings, or permanent costs offset by immediate savings, or both, the remote or the immediate savings are not obvious and do not seem to outweigh the undesirability

of large expenditures which create immediate and very practical problems for legislators and tax-payers alike.

By reason of this fact, most communities prefer to work toward desirable objectives by adaptation of existing methods and machinery. This may have two undesirable results. Benefits derived from adaptations may be obscured by existing evils, or perfectly sound ideals may fail from lack of opportunity for successful demonstration. Such partial or complete failure of reformatory efforts tends to bring the entire matter of reform into disrepute.

7. *Ignorance.* Ignorance of officials, legislators, and the populace as to real conditions tends to perpetuate existing methods and institutions because everything seems to be running along all right. Proposals for change, therefore, meet with the suspicion that the reformers have ulterior motives for demanding a change, or that they are impractical theorists whose activities have to be held sternly in check by "common sense." Here again, education is the remedy.

## VII. IMMEDIATE OBJECTIVES OF THIS STUDY

If the foregoing brief analysis of our situation with reference to crime is approximately correct, the method of attack upon the problem seems to be determined for us. Education alone offers encouragement for ultimate success. From the foregoing we may draw the conclusion also that education to this end should be of two kinds. The public must be sufficiently informed to appreciate the need for a change and be willing to pay for it; and when the change comes, we must have an available supply of technically trained persons to make the new methods and machinery successful. Let us consider these needs just a little further.

1. *The education of the public.* In spite of the fact that there is an abundance of material available which throws a flood of light upon the crime situation, there are certain obvious reasons why we are not getting the necessary popular enlighten-



ment from it. Much of the most illuminating information is contained in the reports of institutions and organizations and in special studies. This reaches mainly those persons who are especially promoting the work of the organizations and who are already awake to the necessity of doing something about it. Even these persons, however, do not, as a rule, have well rounded information. Indeed, they have an over-education in regard to some phase of the problem such as reformatories, probation, institutional care, parole, etc., together with a lamentable ignorance of what is being done or needs to be done in other parts of the field.

The second source of information is found in the abundance of articles which make up the pages of scientific journals such as the *American Journal of Criminal Law* and *Mental Hygiene*. Unfortunately for the purpose we have under consideration, this material is of a technical character and is not widely read except by persons especially interested in these fields, including students whose interests may be casual or transient.

There are many books of many types. Scholarly and highly technical volumes are of little value for the education of the public as they are not widely read, and if read, would be unintelligible to readers who need information most. Usually they bear only on one phase of the problem. On the other hand, most books written in a popular vein are not scientific, and in many cases they are incorrect or misleading. The popularization of much recently acquired data in the less technical and popular magazines and periodicals is apt to over-emphasize certain phases and to leave erroneous impressions. It does serve, however, to stimulate interest in the subject which is highly desirable. This value it shares with the type of book last mentioned above.

Quite recently, commendable efforts have been made to bring together the available information in this field in a single volume.<sup>14</sup> Excellent as such books may be, their chief value lies

<sup>14</sup> Notably M. Parmelee, *Criminology*, and E. H. Sutherland, *Criminology*, and J. L. Gillin, *Criminology and Penology*.

in their use as text books in college classes. Certain generally accepted requirements for texts, however, tend to limit their use for the diffusion of general information to the public. These requirements are comprehensiveness, technical analysis and scientific deduction. This means that the book is long, technical, and requires sustained attention. For the layman, the reading of such a book is a long, hard job which he will not undertake unless driven by some special motive. On the other hand, the number of students taking courses in criminology is negligible when compared with the entire student body and with the masses who do not go to college.

A common source of information and misinformation is the special lecturer who broadcasts his opinions, plus enough scientific data to give them weight, to lyceum and Chautauqua audiences. Since the actual burden of the "message" of such lectures is seldom long remembered, there may be a net result of awakened interest in the general problem which is of value.

There is need, therefore, of giving serious thought to the matter of placing the necessary information before those who should be in possession of it in a manner which will assure its reception and comprehension. Professor Robinson's assertion that one of the greatest needs of the present time is to make the more important findings of modern science a part of the common knowledge of the people is obviously true in reference to the problem of the criminal.<sup>15</sup> Available knowledge about crime and criminals lends itself readily to this situation, by reason of the human interest and fascination which have given the villain a commanding position in the drama and fiction. It needs to be set forth as briefly as possible in literary rather than in scientific style, with its more important sociological connotations indicated, but with illustrative and corroborative material confined mainly to marginal references to easily accessible and readable works of good authority. In other words, the public

<sup>15</sup> J. H. Robinson, *The Humanizing of Knowledge*. Cf. H. E. Barnes, "The Crime Complex," in *New York Times Current History Magazine*, December 1924.



needs a "first book on crime" which will convey much needed information and create an appetite for more. When such a book appears, as it must sooner or later, its distribution to the public should be as free as possible from financial considerations in order that its circulation and use might be prompted by civic and welfare organizations. Only in this manner could it be circulated widely outside of that relatively small circle which would read it because of an interest already developed in the subject.

It goes without saying, that even with the wisest of leaders, society will not initiate and successfully carry out a more intelligent crime program until it is more generally in possession of the salient facts regarding crime and criminals and the futility of present methods of dealing with them.

2. Reform, however, depends more upon *men and methods* than it does upon machinery. In this case, perhaps, the less machinery the better. No doubt the present system would function much better than it does if it were manned by a properly trained and organized personnel. If the handling of crime is to become scientific, as medicine and nursing have become, and as education is becoming, it is imperative that it should be done by trained men and women. A minimum requirement here would seem to be (a) a professionally trained police force, at least that part of it engaged with crime and criminals; (b) clinical experts for studying the crime and the criminal who committed it; (c) specially trained persons to supplant the present jury, together with socially educated judges and attorneys for determining the necessary social treatment of the offender and the protection of society; (d) properly trained persons for carrying out the decisions of this body, either outside or inside of adequately equipped institutions.

Progress is being made in this direction and we are in a position to train such public servants as soon as there is assurance that they will be employed when trained. No compromise should be made on this position, since to attempt to carry out a scientific program without scientifically trained workers would be inviting disaster.

### VIII. EXTENT OF EDUCATION NECESSARY

Fortunately the task of education is not so great as it appears to be. It is the molders of what we call public opinion who must see the light,—the persons whose judgments influence large numbers of people who either have not the capacity to think for themselves, or who are content to let others think for them. Fortunately these are people fairly easily reached, such as teachers, clergymen, leading professional and business men and women, and those actively engaged in promoting the activities of the various civic and semi-cultural organizations. Should we ever become intelligent enough to require special training and ability for our legislators and executives, these could go a long way toward carrying out such a program with a minimum of popular support.

### IX. NOTIONS OF DEMOCRACY AT FAULT

Unfortunately a considerable part of our problem lies in the concept that political equality implies the capacity of all individuals to handle society's affairs. This notion has been abandoned in education, in medicine, and in health work, but it still prevails in the matter of government and legislation. Nowhere is this notion less true than in the treatment of the crime problem. If democracy is to survive, however, it will have to adopt the principle of delegating technical functions to such persons as are qualified to perform them.

### X. POPULAR NOTIONS ARE MIXED

The popular notions of crime are a singular mixture of ideas ancient and modern, theological, philosophical and scientific. Among the primitive survivals are fear, vengeance, and hatred. Among the religious notions are guilt, punishment, expiation, and retribution. Philosophical or speculative ideas include

justice, free-will, moral responsibility, depravity, etc. Mingling freely though vaguely with these are the ideas of sick souls, dwarfed personalities, the suppressed ego and the like. More recently there have appeared the concepts of criminal types, born criminals, insane criminals, feeble-minded offenders, psychopaths, unstable personalities, and offenders with defective glands, all of which have filtered into the public consciousness through contact with criminal science and the newer psychology.

## XI. THE SITUATION NOT NECESSARILY DISCOURAGING

In spite of the somewhat gloomy picture which has been sketched in the preceding pages, it is neither a difficult nor complicated task to bring some definiteness out of this chaos. There is now available a body of information about crime and criminals which is capable of being presented in terminology perfectly intelligible to the layman. Such a presentation need not be long or burdensome. It should serve to clear up much confusion and ultimately lead to the elimination of what is now social waste. We may hope, even, that it may help toward the abandonment of much that is stupid and futile in our present treatment of crime and criminals.

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## II

### WHO IS THE CRIMINAL?

#### I. THE POPULAR CONCEPTION OF THE CRIMINAL

Who is this person we call the criminal? A casual glance at the literature of criminal science reveals the fact that the conflict of opinion about this question among students of crime is no less profound than that which we have seen to be prevalent in the popular mind. Such general confusion on a social problem of great importance cannot be without reasons. One seems warranted in giving these some consideration at the outset of this study.

Some years ago, the late Nat Goodwin played "Fagin" in a stage version of "Oliver Twist," and the part of "Bill Sikes" was played by Linn Harding. George S. Dougherty, formerly many years with Pinkertons and later chief of detectives in the New York Police Department, was asked to attend the performance and decide whether the actors were true to life in their portrayal of criminals. "The play was fine melodrama," he writes, "and the acting left nothing to be desired in thrills and strong characterization. But if Fagin and Bill Sikes had stepped off the stage on to Broadway the first traffic officer they met would have arrested them on sight. They looked too much like criminals. And present-day criminals don't."<sup>1</sup>

Why did Goodwin and Harding make up so, and why would the first traffic officer they met have arrested them? Because they portrayed a type of physiognomy and dress which is everywhere associated with criminals in the popular mind. Not only is this true of the stage,—the same holds true of literature.

<sup>1</sup> G. F. Dougherty, *The Criminal as A Human Being*, p. 37.

The villain in fiction and the crook in crime and detective stories are the same. You recognize them in the illustrations, for art has the same conception of the criminal face. When you read the books you visualize the criminal's countenance and see cunning, stealth, treachery, and his many other attributes written there. The "movies" reproduce him so faithfully that no introduction is necessary.

Where did we get this concept of what a criminal looks like? Further, is there a human being or a class of human beings which corresponds with this notion? Perhaps we might profitably attempt an answer to these questions at once, for such conceptions are not without reason. Such a picture of the criminal could not have been accidental.

## II. POSSIBLE SOURCES OF THE POPULAR CONCEPT

It is a well known fact that notions of this character do not spring into being over night nor within the life-time of a single generation. They are like any other characteristic of a culture. They develop slowly out of experience. In other words, they are traditional, passing on from one generation to another from more or less remote sources.

It is not likely that any such notions existed in the minds of our primitive ancestors, for the history of crime seems to indicate that among them the criminal was an enemy, being in league either with the foes of the group or the powers of evil.<sup>2</sup> Consequently there was no difference in his appearance from that of any of the rest of them. The concept of a typical criminal person would seem, then, to have originated in some higher state of culture. The attempt to locate this stage without exhaustive research is highly speculative. There is no harm in speculation, however, so long as this is kept in mind, and the results of our cogitations are not confused with the findings of scientific research.

<sup>2</sup> M. Parmelee, *Criminology*, pp. 19, ff; also E. H. Sutherland, *Criminology*, pp. 25-29; and many others.

It seems reasonable to believe that certain physical characteristics came to be identified with traits of character and conduct about the time that philosophical speculation began to supplant dogmatic theology as an explanation of behavior. Depravity, cruelty, treachery, deceit, and violence are ideas which arouse in us certain feelings of horror, dread, and even fear. Persons who possess these characteristics to an extreme degree are apt to reflect them in their faces. But repellent faces arouse in us the same feelings of dread, fear, etc. What, then, are the characteristics of repellent persons? Commonly they are low, receding foreheads, beetling brows, distorted noses, protruding or unusual ears, bony faces, massive jaws, beady eyes, a stubble or bristling beard, black or red in color, distorted countenances, furtive glances and movements, stooping posture, slouching gait, or any other pronounced deviation from normality. Quite naturally, then, the traits of character and conduct which inspire us with dread and terror would be associated with a person who gave us the same feeling. No doubt an accumulating mass of experience which society has had with such persons tended to fix this identification. For these are, in the main, the degenerate dregs of humanity whom we have never learned how to curb or eliminate.

It is true, also, that types are extremes, embodying many characteristics, and rarely are individuals found who are truly typical. That is why the type is recognized at once by everybody. That is probably the reason, also, as Dougherty points out, that the ordinary individual criminal does not look like that.

### III. RELATION OF THE POPULAR NOTION TO REALITY

Conceding that there is a pretty definite notion in the popular mind as to what the criminal is and looks like, we are concerned to inquire whether there is anything in real life which corresponds to it. Is there a person who commits crime who looks like that? Or, is there a class of persons of that general de-



scription who are criminals? The answers which have been given to these questions in recent years are widely divergent. We may consider them with profit. As might be expected, the answers have varied from an emphatic affirmation to an equally emphatic denial, with numerous opinions occupying intermediate positions. We are concerned here only with those matters which lay claim to being scientific. We shall take up some of them as nearly as possible in the order of their development. Fortunately, the first one to be considered is a striking confirmation of the popular notion, so that, for a time at least, it may be viewed as an affirmation of the correctness of popular judgment.

#### IV. LOMBROSO'S CRIMINAL TYPE

Cesare Lombroso, an eminent Italian surgeon and scholar, is generally conceded to have been the founder of modern criminal science. We shall have occasion to return to him and to his work many times in the following pages. We are concerned here with his theory as to the nature of the criminal. He came to be interested in criminals as a result of his duties in connection with Italian Prisons. To him fell the lot of making post-mortem examinations of deceased prisoners. As a result of these he became convinced that the criminal was a distinct type of human being, an opinion which was confirmed and later modified by the results of most elaborate researches.<sup>3</sup> The evidences of this deviation of the criminal type from the normal being he called the stigmata of crime. The criminal type could be recognized by these. With the modification of this idea we are not now concerned.

Of the many experiments of Lombroso, one is especially interesting to us in this connection. He believed that a composite face, made up of the dominant characteristic features of hundreds of criminal faces would give him a picture of the typical

<sup>3</sup> For references and criticisms see bibliography at the end of this chapter.



criminal. In order to secure this he superimposed the negatives of many photographs of criminals upon a common plate. In his opinion, the result was a confirmation of his theory, although this has been contested hotly by his critics.

It is of interest to us, however, to learn that a general description of the visible characteristics of Lombroso's criminal man is a rather startling picture of the popular notion of what a criminal looks like.

## V. SOME RESULTS OF CRIMINAL SCIENCE

One of the outstanding results of Lombroso's studies was the shift of the point of interest from the criminal act to the criminal himself. A consequence of this was the appearance of many opinions as to the causes of criminality. Lombroso felt obliged to alter his own theory and attribute crime to a dual source, atavism and degeneracy. By some it was claimed that it was mainly due to a form of insanity.<sup>4</sup> A depraved heredity was thought to be responsible for most criminals.<sup>5</sup> The development by the psychologists of devices for measuring intelligence brought forth claims for feeble-mindedness as a principal cause.<sup>6</sup> To feeble-mindedness has been added mental inferiority, mental and nervous disorders, and unstable personality.<sup>7</sup> Perhaps the most serious effort made to check up on the theories of Lombroso and his followers was that completed by Goring in England which arrives at the conclusion that criminals as a class are inferior human beings characterized chiefly by their stupidity and inability to play the game according to the rules of modern society.<sup>8</sup> This, in a way, was a con-

<sup>4</sup> Green, S. M., *Crime*; Allison, H. E., *Care and Custody of the Insane*; McKim, W. *Heredity and Human Progress*; Maudsley, *Responsibility in Mental Disease*.

<sup>5</sup> G. Tarde, *La philosophie penale*, p. 177, also P. A. Parsons, *Responsibility for Crime*, chap. V.

<sup>6</sup> Especially H. H. Goddard, *Feeble-mindedness*, and *The Criminal Imbecile*.

<sup>7</sup> Notably Hoag and Williams, *Crime, Abnormal Minds and the Law*.

<sup>8</sup> C. Goring, *The English Convict*.

firmation of my own theory, advanced in 1909, that crime is the normal function of an abnormal person.<sup>9</sup>

At the opposite extreme from Lombroso and his followers has been a considerable and distinguished group of American Penologists who have felt that the criminal is the victim of circumstances.<sup>10</sup> This opinion appears in its extreme form in the writings and speeches of T. M. Osborne to the effect that there is no flesh and blood creature corresponding to our notion of the criminal. He holds that the persons we call criminals are just like all the rest of us,—that we would do just as they do under their circumstances.<sup>11</sup> He finds the word criminal to be a mere abstraction which we apply to a person who has violated the law.

## VI. THE CRIMINAL A REALITY

This very superficial survey of the answers to our initial questions leaves us still in the dark. A much more extended consideration of theories is necessary before we are warranted in drawing very definite conclusions regarding the criminal or a class of persons who commit crime. Let us, therefore, for the time being, leave out of consideration the conflicting opinions of criminologists and look at our situation from another and very practical angle.

We have seen that the money cost of crime in 1925 was probably not less than six billion dollars. Half of this represents the "haul" made by criminals. The other half might be said to be what we spent to keep them from getting it. This leaves out of consideration the effects of crime not calculable in money, such as murder, woundings, etc. It seems pertinent to ask who did all this. The crime of last year represents the acts of individuals. Who are they? Who are the one hundred and fifty or seventy-five thousand persons in our penal institu-

<sup>9</sup> P. A. Parsons, *Responsibility for Crime*, chap. III.

<sup>10</sup> Notably Z. R. Brockway and the exponents of "reformation."

<sup>11</sup> See quotation in C. Bacon, *Prison Reform*, pp. 149-151.



tions at this moment, many of whom have been there off and on since their youth? Who are the crafty rascals who did the nefarious deeds of last night, last week, and last month, whom the police did not catch and who are yet at liberty planning more crimes, no doubt?

We are inclined to believe that the criminal is a very real person. Most people will be inclined to agree with us. We do not get anywhere by denying it because the fact of crime remains to be accounted for, no matter what you call the persons who did it. But there must be some understandable reason for all this confusion of ideas about them. Lombroso undoubtedly was a great scholar. Every one who knows Thomas Mott Osborne knows he is a very intelligent and able man. Looking at the same social phenomenon, one claims the criminal is abnormal, subnormal or highly pathological, the other says he is just the same as all the rest of us.

## VII. POSSIBLE SOURCES OF DIVERGENCE OF OPINION

We have said that these men are looking at the same social phenomena; but we must bear in mind the difference in viewpoint. The same house looks quite different when viewed from the front and from the back. Your idea of it depends very much on whether you are collecting garbage or delivering the mail. A glance at the phenomena of crime may reveal a like difference in the general appearance of it when viewed from different angles. What, then, is the thing which these men see about which they differ so widely?

It is a difficult matter to get a look at crime. It exists in isolated, scattered instances, and is momentary. Statistics of it do not show the whole picture. Nor do we ever get a view of all criminals in a mass. Lots of them we never see. Therefore, anything which we can look at which represents crime or criminals makes it dangerous to draw conclusions because it may not be an accurate representation of the thing we take it

for. Perhaps the best thing we can do is to keep these facts in mind and take a look at whatever is in sight.

Dominating the center of the landscape of crime is the mass of criminals in our penal and correctional institutions. A glance at what may be seen dimly going on in the shrubbery of the background, leads us to believe that there are more criminals outside this group than there are in it; but we will, perforce, follow the precedent established by criminologists and take a look at those we have caught and shut up for one reason or another.

### VIII. OFFENDERS IN CONFINEMENT

One of the most comprehensive counts of institutional population yet made gives the number of prisoners in the United States on July 1, 1922, as 163,889.<sup>12</sup> A rough guess of present prison population would be around one hundred and seventy thousand. A few thousands one way or the other are of little consequence in this consideration. Very imperfect statistics indicate that admissions to correctional institutions in the course of a year are from three and a half to four times as great as the prison population on any given date. If that is true at present we shall have had about six hundred thousand persons in our correctional institutions during the year 1925.

It must be kept in mind that these figures include only the persons who were confined. Persons convicted and otherwise treated are not included; nor are those guilty ones whom we failed to convict. To these must be added a large number who are not even arrested. There is no possible way of finding out how many of these there are. Conservative guesses have placed the number of criminals in the population at twice those confined during the year.<sup>13</sup> Doubling our figure of six hundred thousand gives us one million two hundred thousand or not far

<sup>12</sup> U. S. Bureau of the Census, preliminary announcement, *Prisoners in Penal Institutions, 1917 and 1922*, p. 2.

<sup>13</sup> M. Parmelee, *Criminology*, p. 205.



from one per cent of the total population. Less conservative estimates have placed the criminal population as high as two per cent.<sup>14</sup> Of the persons who are really dangerous to society there are probably not that many who would be classed as criminals by the law. If you include anti-social persons who manage to keep within the letter of the law, what Henderson called extra-legal criminals, the criminal population probably exceeds the higher guess.<sup>15</sup>

But as we have said, we can get a "close up" of only that part of the criminal population which we have caught and put in our places of detention. Here again we are hampered by the fact that we have not looked at them with a very careful scrutiny except in special cases here and there. Lack of uniformity in the keeping of records has robbed us of valuable information which we should have in our possession. In judging the entire prison population by the small samples we have studied carefully, we are again assuming risks which make estimates based on these studies little more than guesses. In spite of these facts, some things are quite evident, judging from such studies and from the general observations of persons who have dealt with criminals for a long time. One of these seems to have special significance for us at this point.

## IX. TWO GENERAL TYPES OF PRISONERS

Prison populations may be roughly divided at any time into those who are in prison for a single or first offense and those who have had previous penal experience. These have commonly been called single offenders and recidivists or repeaters. The term single offenders is not accurate because it applies to the first offense for which the prisoner has been imprisoned. He may have committed many crimes without detection or convic-

<sup>14</sup> Hoag and Williams, *Crime, Abnormal Minds and the Law*, p. 8, quoting Judge Harry Olson of the Chicago Municipal Court.

<sup>15</sup> C. R. Henderson, *Correction and Prevention*, vol. 3, *Preventive Agencies and Methods*, p. 3.

tion leading to penal treatment. However, we may assume that a large part of the single offenders are really in prison for their first serious criminal act. Prisoners seem to be divided about half and half between these two groups in state prisons.<sup>16</sup> This is probably a higher percentage of repeaters than would be found among juvenile offenders. The reformatories, however, get a high percentage of repeaters because a large number of first offenses are treated by probation and the training school is resorted to very often where probation has failed to get satisfactory results.

When we shift our attention from criminals in institutions to their criminal careers we come upon some very significant things. One recent writer holds that repeaters are responsible for 91 per cent of crimes and single offenders for only 9 per cent.<sup>17</sup> While such exact estimates are very hazardous, this one is probably not far from the truth. The bulk of our volume of crime is probably the result of the activity of a portion of the criminal population who may be spoken of as habitual offenders.

This division of the volume of crime, however, must be undertaken with caution, for, as we have seen, not all of the prisoners serving their first sentences are first offenders. Again, some of them, who are really first offenders, may be beginning careers of crime and may appear later as recidivists.

Taking all these conditions in consideration, we find that the greater part of the burden of crime is imposed upon society by only a portion of the criminal population. This would seem to suggest that we study these two groups separately.

## X. THE SINGLE OFFENDER

Generalizations about single offenders as a class should be made with caution. The fact that a person commits a crime

<sup>16</sup> Report on New York State Prisons for 1921. See also B. Glueck, *First Annual Report of the Psychiatric Clinic at Sing Sing Prison*, p. 3, who estimates recidivists in American prisons at 66%.

<sup>17</sup> G. C. Henderson, *Keys to Crookdom*, p. 7.



only once gives little indication of the extent of his criminality or his menace to society. Some of our most revolting crimes are committed by members of this class. Many murders and wholesale killings are the only crime committed by their perpetrators, as is so often the case with embezzlement of public and private funds. However, one generalization has been made quite frequently regarding single offenders. Many of them commit their crimes under circumstances which are largely responsible for the act. There are circumstances under which almost any person would commit crime. Fortunately for the most of us, such combinations of circumstances do not occur in our lives. Their occurrence in the lives of many is to a certain extent accidental. Persons who commit crime under such conditions cannot be distinguished from the rank and file of the law-abiding except by this single fall from grace. Persons who know them in private and public life and those who deal with them in prison know that they are ordinary or normal human beings. From these we shade imperceptibly into groups in which the inducing cause of criminal behavior is so subtle and inconspicuous that it can be detected only by the most careful clinical study. This deviation from the normal may induce criminality only once in a career. There are other troubled souls who are constantly on the verge of conflict with society who manage largely through the aid of good luck to escape the commission of a crime.

## XI. THE HABITUAL OFFENDER

But what about that part of our criminal population, half of it, shall we say, which is responsible for the bulk of our crime, perhaps nine-tenths? The exact percentages are immaterial,—the fact is outstanding. What are these repeaters like when we take a close look at them? Clinical studies made with care during recent years are getting results no less startling than were the findings of Lombroso and his followers more than a generation ago, only the basis of the abnormality revealed has

shifted from anatomy to the mind. If we confine our observations to the group of fairly mature repeaters, we find conclusive evidence that we have here a group characterized by a high degree of variation from normal mental condition and function. As yet, our tests are inadequate for that vague thing we call personality or character, but clinical methods are revealing more and more clearly the physical and mental basis of that instability, irritability, irrationality, or irresponsibility, which brings much friction between society and persons who manifest little other indication of pathology. Taking the total percentages of actual feebled-mindedness, and psycho-pathology, that is, all cases with obvious mental defect or pathological make-up, coupled with turbulent life careers, not overlooking the criminality itself, we get a proportion to the number of offenders in this group which seems to be conclusive evidence of abnormality as an important factor in their delinquency.

## XII. POSSIBLE CAUSES OF DIVERGENT THEORIES

It seems probable, in view of the foregoing, that much depends upon which of these two groups of offenders we look at when we make up our minds regarding the nature of the criminal. It is obvious that Lombroso's gaze was fixed upon his born criminal, a highly degenerate, habitual offender. For him the lesser criminals were to be accounted for on the basis of dilution of the criminal nature. He was looking at criminals from the highly pathological end of the line. On the other hand, Tom Osborne sees the criminal a normal human being and a victim of unfortunate social experiences. He could be restored to society by an appeal to his normal characteristics according to Osborne's plan. But confessedly the plan failed of success because of the abnormals who "gummed up the works." An effort to eliminate these led to the Sing Sing Clinic which revealed 66 per cent of the prisoners to be mental or personality deviates. It is obvious that Osborne sees criminals from the normal end of the line. Neither he nor Lombroso gets an adequate



picture of the entire group. Neither sees the class of criminals complete.

It is significant to note that a recent compilation of the data of criminology does not undertake a definite answer to the question raised in this chapter.<sup>18</sup> It is increasingly apparent that neither the denial of the fact of criminality nor any one-sided definition of it is adequate to account for the situation which confronts us.

### XIII. WHY SEEK A DEFINITION OF CRIMINALITY?

Who, then, is the criminal? In spite of the apparent and very real difficulty in the way of getting a satisfactory answer to this question, there is abundant reason why we should continue our efforts to find one. Whatever and whoever he is, society is apparently helpless before him. To date, nothing we have been able to do seems to curtail either his numbers or his activity. Although this is disputed, there are evidences that society is playing a losing game,—that criminality is becoming more common and our methods of dealing with it increasingly ineffective.

This is certainly a situation which demands analysis. If the criminal is an ordinary person, what is his source and what do we need to do about it? The only way we can answer these questions is to consider what has been done in the past, what is known about crime and criminals, and what is being done at the present. While it is not practical to make this study exhaustive, we shall have before us the results of much exhaustive work. On the basis of such a presentation we can at least indicate what needs to be done, both for the protection of society and for the good of the criminal. Furthermore, we may be forgiven by some, at least, for attempting some tentative suggestions as to what may be done. It is doubtful if any scheme which we shall propose could work any more badly than some methods which are now being employed.

<sup>18</sup> E. H. Sutherland, *Criminology*, Philadelphia, 1924.

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### III

## THEORIES ABOUT CRIMINALS

### I. EARLY CRIMES AND CRIMINALS

THROUGH tradition the past lays a heavy hand on the present. An effort to understand any department of society's house-keeping must take this into consideration if it is to be successful. Dominating ideas about crime and criminals and prevailing methods of dealing with them are intelligible only in the light of what we have done and thought about them in the past. This ground has been worked over pretty thoroughly by scholars of known reputation and we shall not attempt more than a summary of their conclusions.<sup>1</sup>

We have already seen that there is little probability that there was any theorizing on the subject of crime among primitive people. At an early stage in the development of civilization, however, we find the mental association of crime and criminals with magic and religion. Both have left their indelible imprint upon the thought of all succeeding generations. We are far from being free of them at present.

A glance at the short list of acts considered criminal among nature peoples reveals this early influence of magic and religion. These early crimes were acts which made the criminal dangerous to the group.<sup>2</sup> *Incest, poisoning, and violation of hunting rules* were crimes because of certain economic, political and customary notions. *Treason* was an obvious alignment of the of-

<sup>1</sup> For references see bibliography at the end of this chapter.

<sup>2</sup> H. Oppenheimer, *The Rationale of Punishment*, p. 71.



fender with the enemies of the group. *Witchcraft* aligned the offender with the forces of evil. *Sacrilege* invited disaster by offending the spirits or gods.

## II. THE THEORY OF POSSESSION

There was probably little tendency among primitive people to account for the person who did these things. Their main concern was vengeance or retaliation and, incidentally, social protection. Quite naturally, when culture advanced to the point where speculation on this matter began, a plausible answer was found in the influence over the person of evil spirits or "possession," or that he was under the influence of some magic spell. The mere possession of magic powers or ability to command the spirits did not constitute criminality. Therefore, the witch doctor or medicine man was not a criminal. It was only when a person with such powers used them in a way inimical to the group that he was considered to be a criminal. A person who so used these powers was a witch, and the anti-social uses of his powers constituted witchcraft.

## III. ACCURSED OR DEPRAVED PERSONS

When culture advanced to the point where the destinies of men are conceived to be in the hands of powerful spirits or deities it is not uncommon to find immoral and criminal acts accounted for on the ground that an individual is being led by the Deity to such behavior for his own undoing. Such individuals are "accursed of God" as distinguished from those who are under a magic spell or possessed of an evil spirit. When any individual is openly and continually at war with the laws of the Deity his action is accounted for on the ground of depravity.

Once these ideas regarding the nature of the offender became fixed they persisted with great power until the present. In the development of Christian theology they received powerful sup-



port. As religion develops, the will of God becomes closely identified with the law and crime is also sin. The religious view of the nature of the criminal then becomes prevalent.

#### IV. THE CLASSICAL THEORY OF THE CRIMINAL

The ideas of crime and criminals which dominate criminal law and practice of today were developed by a group of thinkers in the eighteenth century. Foremost among these was Beccaria who has been considered the founder of what has come to be called the classical school.<sup>3</sup> By these thinkers, conduct was conceived to be the result of an act of free will on the part of an individual. The motives for conduct were the pursuit of pleasure and the avoidance of pain. Under the influence of this thinking, a system of punishments was worked out which was designed to persuade the individual to refrain from doing the forbidden thing for fear of the consequences. The person, therefore, who challenged the popular will and did the forbidden thing was to be made to suffer sufficiently to compensate for his act and to dissuade him and others from similar acts in the future.

There is an assumption in this theory that the person who commits crime is no different from any one else since he, like all others, is a free moral agent and has, in the exercise of this freedom, chosen to do the forbidden thing. He must, therefore, take the consequences which were carefully determined in advance to fit his and all other unlawful acts. This fitting of the punishment to the crime gave us the notion of proportionate justice which is never quite free from the idea of retribution. Even when the freedom of the will was most vigorously accepted there lingered the idea of the natural depravity of the offender which led to his choice of forbidden conduct, so great is the unwillingness of man to admit that the normal person would behave in such an anti-social way.

<sup>3</sup> C. Beccaria, *An Essay on Crimes and Punishments*. (Dei delitti e delle pene.)

## V. THE BREAK IN THE CLASSICAL THEORY

A break with the hard and fast doctrine of the classical school was bound to occur. The same development of human thought which gave us a philosophy of crime was certain, in time, to recognize the fact that all persons were not equally responsible. Children, imbeciles, and insane persons were obviously not responsible for their acts. Other conditions were conceived of as lessening the degree of responsibility. These developments caused the system to work badly because of the necessity of determining the existence or degree of responsibility in each case. This, very often, was a difficult thing to do. An important concession on the part of the nineteenth century penologists paved the way for the development of those modern ideas of the criminal which were to take definite shape during the last quarter of the century. The acceptance of the doctrine of limited responsibility was destined to remove the point of interest from the realm of pure speculation regarding motives and how they were to be controlled or directed, to the analysis of each particular case. It was necessary to determine the measure of responsibility present in order to determine the proper amount of punishment. The shift in interest from the crime to the criminal was inevitable. It resulted in the inauguration of the modern or scientific school of criminology. We are not concerned here with the development of the science of crime. It has, however, produced a number of theories regarding the criminal which we should consider.

## VI. CAUSES OUTSIDE THE CRIMINAL

The shift of the point of interest in criminology from the act to the offender and from the speculative to the scientific realm was hastened by the development of statistics. Early in the nineteenth century certain countries began counting and keeping records of such significant events and conditions as



would be of assistance in the control of society and the handling of its affairs. At first such conspicuous events as births, deaths, marriages, crimes, etc., were enumerated but the practice soon came to include much data of a political and economic nature as well as social, or what has since come to be called vital. As this data accumulated, students of social phenomena began drawing certain deductions from it which led to the discovery of so-called "social laws." The interpretation of the data secured in this manner soon developed a technique and came to be known as statistics, the science of interpreting social numbers. The outstanding result of this development in relation to crime was the discovery that crime was profoundly influenced by certain conditions outside the offender. We shall give this matter further consideration in later chapters.

So impressed with this discovery did some scientists become that Quetelet, who has been called the father of statistics, felt that the criminal himself was only a factor in the crime process. "The criminal is the agent which executes the criminal act," the act being the culmination of a long series of events in which the criminal's participation is only incidental. Ferri even attempted to demonstrate what he called the law of *criminal saturation*. "Just as in a given body of water at a given temperature, we find a solution of a fixed quantity of any chemical substance, not an atom more or less, so in a given social environment, in certain defined physical conditions of the individual, we find the commission of a fixed number of crimes."<sup>4</sup>

Quite naturally these theories were carried to extremes which tended to deny the freedom of the will and personal responsibility. One important result of this, however, was the shaking of the doctrine of the classical school and the general acceptance of the fact that many factors enter into the production of crime.<sup>5</sup> One idea which has played an important rôle in modern penology developed as a result of this trend. This is the theory that crime is the result of environment, which

<sup>4</sup> E. Ferri, *Criminal Sociology*, p. 76.

<sup>5</sup> *Ibid.*, p. 72.

theory we shall consider later. Parallelling this study of external factors in crime, came an intensive study of the offender himself, which was destined to give rise to the theory that crime was the result of a condition within the offender. From this emerges the theory of depraved heredity which was to join in combat with the environmental theory. The contest was waged hotly for over a generation and the echoes of it are still heard occasionally. This conflict of opinion was destined to make a deep impression upon criminal procedure and penal institutions.

## VII. CONDITION OF THE OFFENDER AS THE CAUSE OF CRIME

To Lombroso is given the credit of having been the founder of the school of criminologists who sought to find the cause of crime within the criminal himself. He considered his theory to be in the nature of a discovery, almost a revelation, judging by the following account in his own words. In his capacity as official surgeon he was appointed to make the post-mortem examination of a certain famous brigand, Vilella by name. In this examination he discovered at the base of the skull a pronounced indication of atavism or reversion to primitive type.

“On his death one cold, gray November morning I was deputed to make the *post mortem*, and, on laying open the skull, I found on the occipital part, exactly on the spot where a spine is found in the normal skull, a distinct depression which I named *median occipital fossa*, because of its situation precisely in the middle of the occiput as in inferior animals, especially rodents. . . . This was not merely an idea but a revelation. At the sight of that skull, I seemed to see all of a sudden, lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal,—an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals.”<sup>6</sup>

<sup>6</sup> G. F. Ferrero, *Lombroso's Criminal Man*, Intro., p. xiv.



1. *Atavism.* In the light of the above quotation we can understand how Lombroso, for a long time, saw criminals through the mental image of this highly pathological brigand. The vivid picture which he drew made a deep impression on other scholars. Hack Tuke, describing a case of what was then called moral imbecility, writes as follows:

“Such a man as this is a reversion to an old type savage, and was born by accident in the wrong century. He would have had a sufficient scope for his blood-thirsty propensities and been in harmony with his environment in a barbaric age or at the present day in certain parts of Africa.”<sup>7</sup>

One is tempted here to come to the defense of the savage and suggest that Tuke is weak in both his anthropology and criminology. More recent light on the moral imbecile indicates that this is a slander on the savage. This theory appears to have made an impression on Ellis also, as we shall see in a later consideration.<sup>8</sup>

2. *Degeneracy.* Lombroso's efforts to substantiate his hypothesis of atavism led eventually to its partial undoing. Primitive stigmata were found in abundance but his efforts to check up by examination of other individuals not criminals and the absence of these characteristics in many criminals who were obviously pathological revealed the fact that crime was, in many instances, an incident of degeneracy which could not be considered as atavistic. The further discovery that certain of his so-called stigmata of atavism were commonly found in the insane, epileptic, and what we now call feeble-minded persons led to the conclusion that these were also stigmata of degeneracy.

3. *Insanity.* Almost at the beginning of the development of modern criminal science there appeared an hypothesis, which, in the opinion of the writer, has not received the consideration it deserves by more recent criminologists. This was a theory set forth by Maudsley in 1879 in which he took the position that

<sup>7</sup> Hack Tuke, *Case of Congenital Moral Defect.*

<sup>8</sup> H. Ellis, *The Criminal.*

many otherwise inexplicable crimes were the result of approaching insanity, which, added to the crime committed by the obviously insane would place insanity among the more important causative factors of crime.<sup>9</sup> He was able to demonstrate that much crime was due to approaching insanity, and in many cases it marked the point of departure from a normal to an abnormal state, a step in the process of mind degeneration. This he explained as moral perversion which, he asserts, is characteristic of the approach of insanity. "The last acquired faculty in the process of human evolution is the first to suffer when disease invades the mental organism." In addition to this loss of moral sense, he observed that in extreme cases the modest man became presumptuous and exacting, the chaste man lewd and obscene, the honest man a thief and the truthful man an unblushing liar.

We have here, at the very beginning of the modern movement, a forecast of some of the findings of modern psychiatry, which at the time, however, was almost buried under the mass of data flung out by the criminal anthropologists and sociologists.

4. *Arrested development.* A more recent theory which bears the imprint of Lombroso and his followers made its appearance about the beginning of the present century.<sup>10</sup> It also shows the influence of the rapidly developing science of biology. The attempt to account for the criminal on the basis of arrested development rested upon the biological hypothesis that the individual, from the moment of his conception to his maturity, passes through all the stages of the evolution of his type. For some reason or other, according to this theory, this developmental process is checked in the case of the criminal at a point which leaves the individual a savage, fitted for a strenuous life, in the midst of a society which has centuries before outgrown, on the whole, all need for his kind. In other words, the criminal remains in a state of immaturity for the remainder of his life,—a child of larger growth and greater capacity for evil.

The theory of arrested development as an explanation of the

<sup>9</sup> H. Maudsley, *Responsibility in Mental Disease*.

<sup>10</sup> A discussion will be found in H. Ellis, *The Criminal*.



criminal was destined to be short lived. Along with the concept of "moral imbecility" it was to be replaced by a better understanding of the nature of feeble-mindedness which resulted from the development of a technique of mental testing, and from the studies of psychiatrists.

5. *Feeble-mindedness*. The study of feeble-mindedness in its relation to crime developed rapidly during the first decade of this century. It is interesting to note that three notable works on this subject appeared in 1913 and 1914.<sup>11</sup> The more conservative of these estimated feeble-mindedness to be a causative factor in approximately 20 per cent of English criminals.<sup>12</sup> While Goring estimates the actually feeble-minded to be not less than 10 per cent nor more than 20 per cent of English convicts he in reality attributes the majority to mental defect. Commenting on this fact he says:

"But probably the chief source of the high degree of relationship between weak-mindedness and crime resides in the fact that the criminal thing which we call criminality, and which leads to the perpetration of many if not of most of the anti-social offenses of today, is not inherent wickedness but natural stupidity. At any rate, we need only study the penal record of habitual criminals to realize fully that the one characteristic of the offenses of 90 per cent of the 150,000 persons convicted to prison every year,—the one characteristic apart from their intolerableness in a well ordered society, is the incredible stupidity of these offenses."<sup>13</sup>

Dr. H. H. Goddard has been the leading exponent in America of the theory that feeble-mindedness is the principal causative factor in crime. Basing his estimates upon studies which had been made in sixteen reformatories and institutions for delinquents in the United States, in which the percentage of defectives range from 28 per cent to 89 per cent with only three

<sup>11</sup> C. Goring, *The English Convict*, 1913; A. F. Tredgold, *Mental Deficiency*, 1914; H. H. Goddard, *Feeble-mindedness*, 1914.

<sup>12</sup> A. F. Tredgold, *Mental Deficiency*, p. 225.

<sup>13</sup> C. Goring, *The English Convict*, p. 262.



having a percentage under 50, he drew the following conclusions:—"A glance will show that an estimate of fifty per cent is well within the limit. From these studies we might conclude that 50 per cent of all criminals are mentally defective."<sup>14</sup>

We shall have occasion to comment on these and other estimates in a later chapter. It is obvious, however, that confusion has been caused by use of the term feeble-minded since it has been applied to persons of a mental age of twelve or under, while the sweeping estimates mentioned above include subnormals as well as individuals deviating from normal mental health. This confusion has led to a divergence of opinion as to the relation of feeble-mindedness to crime.

### VIII. HEREDITY AND ENVIRONMENT

As a result of the developments of the last half of the 19th century, two considerable bodies of opinion took shape with reference to the causes of crime. Since the period of philosophical speculation was just beginning to give way under the influence of the scientific method of ascertaining truth, even the scientists indulged in extravagant speculation or rationalization upon the basis of the findings of their experiments. Much of this rationalization found its way into popular thinking along with the most striking of the scientific discoveries. As a consequence, many individuals failed to make a distinction between what was legitimate deduction from scientific data and that which was purely speculative. As a consequence, findings of careful observers like Newsholme and Farr among the statisticians of environmental factors and those of the French and Italian schools of criminologists were seized upon and cited as positive proofs of most extreme claims as to the cause of crime. The writings of Sir Francis Galton served still further to focus attention upon heredity as did a considerable popularization of Mendelian theory.

<sup>14</sup> H. H. Goddard, *Feeble-mindedness*, p. 9; see also his *The Criminal Imbecile*, p. 106.

To many persons it appeared that heredity and environment were mutually exclusive. The exponents of either theory thought to magnify the influence of one and minimize that of the other, according as they felt one or the other factor most important. In America, the development of humanitarian movements, especially those connected with criminals, had predisposed penologists and reformers to accept the environmental theory. This shows clearly in the efforts at reformation which have characterized our treatment of criminals. This also accounts for the bitterness with which the theories of Lombroso and his followers were assailed in this country by penologists, social workers and the clergy.

The hereditary theory of crime has received considerable support in the last two decades from the eugenists and psychiatrists. This has served to revive the old controversy in an occasional outburst here and there, but these outbursts only serve to call our attention to a conflict of opinion which has long since ceased to occupy the center of the forum in the discussion of crime and its causes. The reason for the waning of that conflict lay not in the overwhelming victory of either theory over the other. On the other hand, it has become apparent that heredity and environment are not mutually exclusive as causes of crime; in fact, they interact to such an extent that in many cases it is difficult to distinguish one from the other. One outstanding discovery has resulted from the clinical study of offenders during recent years,—the discovery that the bulk of crime is the result of a combination of pathological condition of the individual, to a great extent hereditary, and vicious, demoralizing and devitalizing conditions in the environment. In other words, where environmental conditions are at their worst, one finds a population ill fitted to resist these conditions because of low vitality and defective or inferior mentality and personality. Bad environment is, in a sense, the low spot in the social pool, into which the dregs of humanity settle.

Needless to say, many apparently normal individuals are dragged by circumstances into bad environmental conditions



with disastrous results to some of them. On the other hand, one finds considerable crime resulting from pathological conditions of the individual in surroundings which leave little to be desired. Nothing is gained, however, in looking at these exceptions and jumping to the conclusion that either environment or heredity is the cause of crime to the exclusion of the other.

## IX. PRESENT TENDENCIES IN CRIMINAL THEORY

In spite of the apparent unwillingness of certain recent writers to concede the correctness of the hypothesis of pathology as the principal causative factor in crime, there seems to be a decided tendency in the direction of a general acceptance of this thesis.<sup>15</sup> Findings of Tredgold, Goring, Goddard, Healy B. and S. S. Glueck, White, Jacoby, Adler, Myerson, Hoag and Williams, to mention only a few of the names, together with the results of numerous clinics now functioning in connection with courts and schools, seem to indicate that the bulk of crime is committed by persons who are unable to adjust themselves to society with a sufficient degree of success to meet the requirements of the law.<sup>16</sup> When we consider that 98 per cent of the population manage to do this, we hesitate to believe that the plight of the unfortunate 2 per cent is accidental.<sup>17</sup> The reader, however, is not asked to concur in this opinion until he has considered the evidence submitted in the following chapters.

<sup>15</sup> This reluctance appears to the writer to be outstanding in the works of Parmelee and Sutherland previously cited.

<sup>16</sup> Full names of these writers and their significant works are given in the following bibliography.

<sup>17</sup> No doubt the writer will be accused of bias on account of his own theory advanced in 1909 that crime is the activity of a certain portion of the population as its natural reaction to environmental stimuli. See P. A. Parsons, *Responsibility for Crime*, chap. III. The developments in criminal science of the last fifteen years have served to modify this opinion only to the slight degree indicated in the foregoing discussion.



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## IV

### FAMILIAR CLASSIFICATIONS OF CRIMINALS

#### I. THE PROBLEM OF CLASSIFICATION

EARLY classifications of criminals appear to have been based upon such differences among criminals as chanced to impress the observer. That these differences were of a general character is borne out by the fact that most of the early classifications contained only two groups.<sup>1</sup> Among the two-fold classifications the more common were those which divided criminals on the basis of the number of crimes which they had committed. Those who committed many crimes were thought of as having acquired a criminal habit. A common classification, therefore, divided criminals into habitual offenders and occasional offenders.

The growing belief that criminality was to some extent the result of an innate tendency led to the appearance in the classification of a group called instinctive or born criminals who were thought to differ from the habitual or professional criminals in that they were driven to crime by conditions within them, whereas the habitual offender was thought to have gradually drifted into the habit of committing crime, or to have deliberately adopted crime as a profession.

The appearance of the theory of the born or instinctive criminal immediately suggested a two-fold division of criminals into those who were born or instinctive offenders and those who were not. The retention of the common division of the latter group on the basis of the number of offenses produced one of the early three-fold classifications, viz.—(1) born or instinctive

<sup>1</sup> See E. Ferri, *Criminal Sociology*, pp. 160 ff.

criminals, (2) habitual criminals, and (3) occasional criminals.<sup>2</sup>

These classifications were bound to become more complicated as more intensive study revealed difference in criminals, in the nature and number of their crimes and in the degree of their social menace. Among the early four-fold classifications was that of Lacassagne which added the insane criminal to the three-fold division given above.<sup>3</sup> Maudsley used this four-fold division in 1888.<sup>4</sup>

While most of the classifications have been academic, the question of classification has aroused extended controversy. Each writer felt obliged to present his reasons for failure to accept existing classifications and to present a logical defense for his own grouping. This tendency to criticize and to re-classify survives in the latest edition of Parmelee's *Criminology*.<sup>5</sup> It is interesting to note, however, that the most recent serious efforts to cover the field of criminal science in a single book omit the entire discussion of criminal classification, aside from the mention of Lombroso's theory of a criminal man.<sup>6</sup> This indicates the waning of one phase of interest in criminology which has held a commanding position for forty-five years. It is undesirable, however, to ignore in this fashion a matter which has been considered of great importance by the majority of criminologists for two generations. Whatever importance may have been attached to classifications in the past, they have a certain value for us at present in that they present a fairly clear-cut picture of what was going on in the development of criminal science and theory. An understanding of each classification, including the fine points involved in

<sup>2</sup> J. Arbaux, *Les prisons des Paris*, 1881.

<sup>3</sup> A. Lacassagne, *Marche de la criminalité*, in *Revue scientifique*, May 28 1881.

<sup>4</sup> H. Maudsley, "Remarks on Crime and Criminals," *Jour. Ment. Science*, July, 1888.

<sup>5</sup> M. Parmelee, *Criminology*, chap. XIII.

<sup>6</sup> E. H. Sutherland, *Criminology*, 1924, and J. L. Gillin, *Criminology and Penology*, 1926.



differentiations between classes, gives one a cross-section of each author's views as to crime and criminals.

It is not necessary, however, to lead the reader into the complicated maze of opinions which have found expression in the many classifications. We shall introduce only a few of the more important groupings which have made what appeared, at the time, to be a legitimate claim to be considered scientific. Perhaps their weakness lay in this claim. At any rate, the most common criticism made against each classification was that it was not scientific,—a charge which each classifier was willing to concede to be true of all classifications except his own.

## II. CRIMINAL CLASSES ACCORDING TO LOMBROSO

Approaching the study of the criminal from the viewpoint, and with the training, of a suregon, Lombroso sought throughout a long and distinguished career to come to an understanding of his problem by a first-hand study of criminals.<sup>7</sup> His methods were scientific, but, as we have seen, his deductions were often highly speculative. As a result of his exhaustive studies he finally posited his conclusions in the following classification of criminals:

- |                         |                         |
|-------------------------|-------------------------|
| 1. Born Criminal.       | 4. Occasional Criminal. |
| 2. Insane Criminal.     | a. Pseudo criminal.     |
| 3. Criminal by Passion. | b. Habitual criminal.   |
| a. Political Criminal.  | d. Criminaloid.         |

The reason for such a classification is understandable only in the light of Lombroso's own theories. It bears the ear marks of his two-fold theory of atavism and degeneracy. It appears, also, to include groups which have no good reason for their existence other than to contain such criminals as did not fit into his general scheme. His inclusion of the political criminal in the class with the criminal by passion suggests a desire to escape from another main division. This makes his interpretation of

<sup>7</sup> For his works see the bibliography at the end of this chapter.

the term "passion" include uncontrollable temper and the idealism and devotion of the patriot; and criminals by passion range from the man who kills another in a fit of anger to the scholarly esthete who leads a revolution to free his native land from tyranny.

Perhaps the chief reason for the group called occasional criminals was to include all of those who were neither born, insane, or passionate offenders. His subdivisions show this. The pseudo-criminal,—that is, the person who is not really a criminal,—applies to all persons who may be considered the victims of circumstances, such as the violators of ordinances and persons driven to crimes of acquisition by poverty, etc. These, according to Lombroso, are not a menace to society in the sense that the born and insane criminals are, nor does society feel or react toward them in the same manner.

The term *habitual* as applied to criminals in this grouping means those criminals who have acquired the habit of committing crime, not because of poverty or pathology but because they have not been socialized properly by their early experiences. This suggests a distinction between his use of the term and the common understanding of it which today includes many offenders whom Lombroso would have called born criminals. This weakness in the classification led Ferri to make a separate division for the habitual offenders.

Lombroso's difficulty appears again in the last subdivision of the *occasional* group. The criminaloid is distinguished from the pseudo-criminal and the habitual offender by the fact that he is impelled to crime by a combination of environmental influences and internal condition. His deviation from normality, however, is so slight that he is not classifiable with the born criminal who is conceived of as being driven to crime by his nature, as a rule, quite independent of environmental conditions. The term criminaloid suggests a mild form of the criminal disease which would seem to indicate that this type should have been considered as a sub-division of the born criminal rather than with the criminal who was the victim of existing circum-



stances and the one who suffered from improper training in his youth,—two perfectly normal persons who, according to Lombroso, have fared badly at the hands of society. He feels obliged to take this course, however, because their condition impels them to crime only occasionally and then usually to acts of little consequence to society.

It must be noted, also, that Lombroso in the absence of a better understanding of mental subnormality, has grouped what were then known as “moral imbeciles,” and what we now call psychopaths and defective personality cases rather indiscriminately, with the born and insane criminals. The enlightening results of modern psychology and psychiatry would have saved him from this difficulty, but they would also have ruined his classification.

### III. CRIMINAL CLASSES ACCORDING TO FERRI

While Lombroso approached the problem of crime with the viewpoint of a surgeon, Ferri had some advantages in studying crime and criminals from the standpoint of a sociologist.<sup>8</sup> While not attaching quite so much importance as Lombroso, perhaps, to the anatomical condition of the offender, he nevertheless belongs to the positive school,—i. e., that group of criminologists who look upon crime as a natural product of certain forces operating within and without the person of the offender. His classification, which follows, shows an obvious difference from that of Lombroso, due, in part at least, to his sociological training and viewpoint.

- |                         |                         |
|-------------------------|-------------------------|
| 1. Insane criminal.     | 3. Habitual criminal.   |
| 2. Born criminal.       | 4. Occasional criminal. |
| 5. Criminal by passion. |                         |

It is noteworthy that Ferri gives the born criminal second place in his classification. He and the insane criminal represent a relatively small group of criminals who commit the seri-

<sup>8</sup> E. Ferri, *Criminal Sociology*, Part I, chap. III.



ous and revolting crimes. With them, in respect to certain of their offenses at least, should be grouped the criminals of passion,—that is, when they commit crimes of violence.

The reader will note further, that Ferri makes a separate division for the habitual criminal and places it in his scheme ahead of the occasional criminal division, of which it was a subdivision in Lombroso's classification. By doing this he escapes the difficulty in which Lombroso found himself and is able to make a clear-cut distinction between the habitual and the occasional criminal. The difference is two-fold. The habitual criminal, according to Ferri, acquires the criminal habit early in life as a result of a slight criminal tendency. Finding crime easy and the consequences not serious, he continues a career of crime as a means of livelihood.<sup>9</sup> The occasional criminal, on the other hand, commits crime as a result of temptations or evil surroundings. He does not acquire a criminal habit and, if temptations are removed, or evil conditions in the environment are corrected, he refrains from crime.<sup>10</sup>

Ferri believed the criminal by passion should be considered to be an occasional criminal but distinguished from the group so-called by the fact that his crime is not due to temptation or the condition of the environment so much as to his own condition which borders closely on that of the insane and epileptic.<sup>11</sup> In everything save his occasional dereliction, his life is exemplary and, apart from a highly nervous condition, he reveals none of the characteristics of the born and habitual criminals.

Ferri omits the political criminal from his classification on the ground that he is not a true criminal.<sup>12</sup> On the whole, this classification was less dependent upon theory than that of Lombroso and, perhaps for this reason, was more nearly a description of criminals grouped with reference to their more important characteristics.

<sup>9</sup> E. Ferri, *Criminal Sociology*, 1917 edition, p. 146.

<sup>10</sup> *Ibid.*, p. 154.

<sup>11</sup> *Ibid.*, p. 153.

<sup>12</sup> *Ibid.*, p. 163.

## IV. CLASSIFICATION ACCORDING TO GAROFALO

A third classification worthy of note is that of Garofalo, another eminent Italian Scholar, who, like Lombroso and Ferri, was also a leader in the positive school of criminology.<sup>13</sup> His classification differs from those of Lombroso and Ferri in that he approaches the problem from the psychological standpoint rather than from the standpoint of anatomy or sociology.

Even more than with Lombroso, his classification was influenced by a peculiar viewpoint. At the outset of his study he undertook an exhaustive survey of the customs and manners of primitive peoples in all parts of the world to learn whether there were any act or acts which were considered to be criminal by all men everywhere. The nearest approach to a "natural crime" which he could find was in acts of unnecessary cruelty, which he found to be disapproved of universally. This led him to the conclusion that criminal acts were such by reason of the mental attitude of social groups. Criminality, therefore, consisted in inability or unwillingness on the part of individuals, for some reason or other, to conform to the group notions of permissible conduct. His classification follows:

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| 1. Typical criminals or<br>murderers. | b. Crimes of passion.                 |
| 2. Violent criminals.                 | 3. Criminals deficient in<br>probity. |
| a. Endemic crimes.                    | 4. Lascivious criminals.              |

The typical criminal, according to Garofalo, is that person who is entirely free from any sense of responsibility for his acts. Such a person is free to undertake any course of action which fits into his mood. Consequently he commits any kind of crime, the nature of the offense in each case being determined by the occasion. He may steal from hunger or spite or to gratify his vanity. He may murder for equally trivial reasons. The rea-

<sup>13</sup> R. Garofalo, *Criminology*, 1914 edition, Part II, chap. I.



son for his crimes is found in a state of mind rather than in anatomical condition or social situation.<sup>14</sup>

The distinction between the typical criminal and the violent criminal in this classification is not clear-cut. The reason for the criminality of the latter group is the same lack of sensibility to social constraint except that it appears in a somewhat modified form. Garofalo is evidently attempting the same distinction here which Lombroso made between his born criminal and his criminaloid,—that is, a difference in the degree of the criminal taint. In other words, the born criminal of Lombroso and the typical criminal of Garofalo are impelled to crime under any or all circumstances by a force within. Gradations occur from these extreme types to normal persons in both classifications. With Lombroso, the normal offenders are placed in the subdivisions of the occasional group. In Garofalo's classification, violent criminals may range from the endemic criminals who commit the violent crimes characteristic of a community to criminals by passion who commit violent crimes but who are distinguished from normal persons with great difficulty.<sup>15</sup>

Such a comparison, however, is not possible beyond this point. The violent criminal is distinguished from the criminal lacking in probity on the basis of the kind of crime which each commits. The violent criminal commits crimes against the person, the criminal lacking in probity commits crimes against property.<sup>16</sup> His deviation from normal is in the absence of a sense of "mine and thine" coupled with an indifference to what society thinks about it. True to his psychological position Garofalo finds this sort of criminal a result of faulty socialization rather than of innate defect.<sup>16</sup>

In his last division, Garofalo has grouped together all sex offenders and all offenders against notions of decency involving sex. This involves his classification in difficulties of which he was not unaware, since sex crimes are due to a variety of causes

<sup>14</sup> *Ibid.*, pp. 111–112.

<sup>15</sup> C. Lombroso, *L'homme criminel*, Vol. II, p. 512, and R. Garofalo, *Criminology*, 1914 edition, pp. 112–116.

<sup>16</sup> R. Garofalo, *Criminology*, pp. 125–126.



and are committed by criminals of different types. He held, erroneously it must now seem, that all sex offenders were characterized by dominance of the sex impulses over the desire to conform to moral requirements.<sup>17</sup>

## V. CRIMINAL CLASSES ACCORDING TO ELLIS

The classification of criminal type indulged in by the Italian leaders of the positive school of criminology was widely copied in England and America. The classification made by Havelock Ellis has had considerable influence among American writers.<sup>18</sup> His grouping shows the influence of Lombroso and Ferri and conforms more nearly to that of the latter. He felt obliged to give a position of prominence to certain subdivisions of their classes which makes his classification longer than either. His division follows:

- |                               |                          |
|-------------------------------|--------------------------|
| 1. Political criminal.        | 4. Instinctive criminal. |
| 2. Criminal by passion.       | 5. Occasional criminal.  |
| 3. Insane criminal.           | 6. Habitual criminal.    |
| 7. The Professional criminal. |                          |

In giving a separate classification to the political criminal, Ellis shows the influence of Proal who published a study of political crime in 1898.<sup>19</sup> In making a distinction between the political criminal and the criminal by passion, he did the logical thing, escaping the difficulty in which Lombroso found himself.<sup>20</sup> He used the term instinctive criminal in preference to born or congenital criminal, but his reasons for making this substitution are not conclusive.<sup>21</sup>

Ellis follows Ferri and Lombroso in his distinction between the instinctive criminal and the occasional criminal. Unlike either, however, he makes a logical distinction between habitual

<sup>17</sup> *Ibid.*, p. 130.

<sup>18</sup> H. Ellis, *The Criminal*, chap. I.

<sup>19</sup> L. Proal, *Political Crime*.

<sup>20</sup> *Supra*, pp. 50, 51.

<sup>21</sup> H. Ellis, *The Criminal*, p. 17.

criminals and the professional criminal. In his own words, "the habitual criminal is usually unintelligent. In him the conservative forces of habit predominate." On the other hand, "the professional criminal is usually intelligent, is guided by rational motives, and voluntarily takes the chances of his mode of life." Again he says, "in intelligence and in anthropological rank generally he represents the criminal aristocracy. He has deliberately chosen a certain method of earning a living. It is a profession which requires great skill, and in which, though the risks are great, the prizes are equally great."<sup>22</sup>

## VI. INFLUENCES OF THE POSITIVE SCHOOL IN AMERICA

### 1. *Classifications by Henderson.*

The influence of the positive school of criminology was quite marked in the United States. In his introduction to the study of the dependent, defective and delinquent classes, Dr. Charles Richmond Henderson followed Lombroso, who was then, in 1891, in the height of his influence. His classification shows considerable independent thinking. It is preceded by the following significant paragraph:

"Using the word 'criminal' in the legal sense, as a person who endures a penal sentence, we find actually in penitentiaries and reformatories classes of human beings quite distinct from each other in physical and psychical traits. Indeed, many of these convicts do not belong by nature to the criminal group, when we use the word 'criminal' to describe the anti-social person who is responsible for his acts."<sup>23</sup> This leads Henderson to think of persons convicted of crime as belonging to two groups,—namely, those who are not really criminals and those who are. These are subdivided as follows:<sup>24</sup>

<sup>22</sup> *Ibid.*, pp. 21-22.

<sup>23</sup> C. R. Henderson, *An Introduction to the Study of the Dependent, Defective and Delinquent Classes*, 2nd edition, p. 219.

<sup>24</sup> *Ibid.*, pp. 219-224.

*Group I.*

1. The accidental criminal.
2. The eccentric reformer and moral genius.
3. The insane criminal and "moral imbecile."

*Group II.*

1. The instinctive criminal.
2. Criminal by acquired habit.
3. Criminals by passion.
4. Criminals by occasion.

Three things are noteworthy in this classification. We have mentioned the inclination to distinguish between real and technical criminality. In addition to this the eccentric reformer and moral genius are clearly distinguished from the criminal by passion. In this connection he notices also that the term "political criminal" does not adequately cover the distinction unless the political criminals are subdivided into the irresponsible revolutionary and the "moral genius." Finally, the "moral imbecile," who was not yet recognized as feeble-minded, was somewhat reluctantly classified with the insane.<sup>25</sup>

In the classification of the second group, Henderson is clearly following the lead of the Italian School whose works appeared in great profusion in the periodical literature of the time.

Dr. Henderson was privileged to keep in active touch with the development of criminal science in America for nearly thirty years. In consequence he made numerous valuable contributions to the literature of the subject. This long contact enabled him to witness the transition in the general field of criminology from the anatomical basis to the psychological basis of causation. In spite of this fact, a second classification of criminals which he used in one of his later books, still shows the profound influence of the positive school of criminologists. This final grouping he adopted in modified form from a work in French by Maxwell which was published in 1909:<sup>26</sup>

<sup>25</sup> *Ibid.*, p. 221.

<sup>26</sup> C. R. Henderson, *Prevention and Correction*, vol. 3, *Preventive Agencies and Methods*, pp. 18-21, adapted from Maxwell, *La crime et la*



1. The insane criminal.
2. The instinctive criminal.
3. The characterless.
4. Wastrels, vagabonds, degenerates.

This adaptation, published nearly twenty years after his original classification, is most significant, perhaps, for what it leaves out. The reader will note the absence of the accidental criminal, the eccentric reformer and moral genius, and the criminal by passion. It also moves the insane criminal from the first to the second group. This seems to indicate a conviction in harmony with much recent opinion, that the greater part of crime was the activity of pathological and inferior individuals. Since this classification appeared in a study of prevention and correction, he was giving primary attention to those large groups of offenders with whom prevention measures and correction institutions are concerned.

## 2. *Classification by Drähms.*

Another American classification which was influenced by the Italian School was that of August Drähms, who was for many years warden of St. Quentin prison in California. While accepting many of the important findings of Lombroso, he advocated the expediency of a much simpler classification of criminals.<sup>27</sup>

1. Instinctive criminals.
2. Habitual criminals.
3. Single offenders.

According to Drähms, all true criminals fall in one or the other of these three groups. He believed that the instinctive or born criminal was a criminal because of an innate condition. The habitual criminal is one who with or without slight innate predisposition to criminality has become an habitual criminal *société*, where criminals are divided into *habitual*, and *occasional* groups with eighteen subdivisions.

<sup>27</sup> A. Drähms, *The Criminal*, 1900.

as the result of his environmental conditions or the treatment which he has received at the hands of society. The single offender is a person who has yielded to temptation or has been overcome by the force of circumstances but once and who does not again fall from grace.

Ellwood adopted this as the most logical classification and treated it at considerable length in an article written in 1910. Under the influence of the accumulating evidence of mental pathology and deficiency, he included all of these groups under the head of instinctive criminals or criminals because of an innate condition.<sup>28</sup>

### 3. *Classification by Parsons.*

My own classification of criminals, published in 1909, enjoyed the doubtful distinction of being among the last serious efforts at classification under the influence of the positive school.<sup>29</sup> While it was going through the press, numerous projects arose which were destined to shift the interest in the basis of crime from the anatomical to the psychological. Nevertheless, we shall give it consideration here because of the motives which were behind the choice and arrangement of the classes. The reader will recognize the principal sources at a glance.

- |                       |   |
|-----------------------|---|
| 1. Insane criminal.   | 4. Professional criminal.               |
| 2. Born criminal.     | 5. Occasional criminal.                 |
| 3. Habitual criminal. | 6. The criminal by passion or accident. |

This was an adoption of Ferri's classification with the addition of a class for professional criminals separate from the habitual group. This distinction between the habitual and professional criminal was due in part to the acceptance of the position of Ellis regarding the latter. The political criminal group was omitted on the ground that the high type of reformer and moral genius was not a true criminal, while the irresponsible

<sup>28</sup> C. A. Ellwood, "The Classification of Criminals," *Jour. Crim. Law and Criminology*, November 1910.

<sup>29</sup> P. A. Parsons, *Responsibility for Crime*, chap. II.

agitator who turns radical belonged to either the insane, born, or passionate group. The reason for including accident with passion in the last group will be stated later.

The motive which guided this classification was to arrange defensible grouping of offenders in the order of the extent to which their commission of crimes was the result of a condition within themselves,—the effort being to demonstrate that in this grouping of classes, the cause of crime inherent in the offender began with complete dominance in the insane and born criminal classes and shaded off gradually until it was present only in a slight degree or not at all in the criminal by passion or accident.<sup>30</sup>

A. *The insane criminal.* The reason advanced for retaining the class of the insane criminal was that society's reaction to the offender should be on the basis of causation; that society's interest in self-protection and in the conservation of its interest in the individual are the same whether he is sane or insane. The absence of the freedom of the will in the insane person does not alter the situation. The causation in this case seemed to justify a separate classification whether the insanity were due to inherited weakness or to a disease acquired by the individual.

B. *The born criminal.* This group was to include a relatively small group of thoroughly unsocial or vicious persons whose brutal and revolting crimes were supposed to be due to a constitutional and congenital condition of the offender. This reflected the prevailing opinion of criminologists. In spite of Lombroso's exhaustive effort to fix this type, the fact remains that many criminals were so classified because scientists were unable to account for them in any other way. The primary characteristics of this group were the so-called stigmata of crime<sup>31</sup> and the particular nature of the criminal offense.

C. *The habitual criminal.* Criminals classified in this group were thought to have become addicted to a life of crime as a result of the interaction of a defective condition of the offender and unfavorable conditions in his environment. At the time,

<sup>30</sup> P. A. Parsons, *Responsibility for Crime*, chaps. II and III.

<sup>31</sup> See summary of these on pages 68-72.



the writer was convinced that the criminal habit was rarely ever fixed in a perfectly normal individual. The term "habitual" was used in the broad sense in keeping with common usage and not open to the criticism of Parmelee whose reasons for abandonment of the term seem unjustified.<sup>32</sup> The habitual criminal is the criminal who persists in a criminal career from force of habit. He does not necessarily commit the same crime always or in the same manner on every occasion as Parmelee suggests he must do if this term is used correctly in reference to him.

D. *The professional criminal.* The reason for distinguishing between the habitual and professional criminal has been stated in the discussion of the classification by Ellis.<sup>33</sup> My reason for making this distinction, however, was based not so much upon the degree of intelligence and anatomical variation as upon the difference in the attitude of each toward his occupation. The use of the term professional to indicate an habitual criminal is as erroneous as to use it for a carpenter or a brick-layer. In other words, to the habitual criminal, crime is the trade by which he makes his living; to the professional criminal it is a *profession* toward which he has the same attitude as the doctor, the lawyer or the educator has toward his calling. Because of this fact, we shall return to this discussion in a later chapter.

E. *The occasional criminal.* The occasional criminal was distinguished from the born criminal mainly on account of the difference in the character of his crime and the circumstances under which it is committed. In contrast with the brutality and viciousness of the born criminal, the occasional criminal was held to be more a worthless or shiftless individual who stumbled into crime occasionally. Henderson expresses this idea in his group of wastrels, vagabonds and degenerates. Here the occasion of the crime finds a low power of resistance in the offender and an apparent inability to steer a course satisfactory

<sup>32</sup> M. Parmelee, *Criminology*, p. 186.

<sup>33</sup> *Supra*, p. 56.

to society. The nature of his plight is now better known and the occasional nature of his crime is no longer a satisfactory basis of classification.

F. *The criminal by passion or accident.* The use of the term "passion" in this grouping applies to anger or uncontrollable temper, in the main. The reason for combination of this with accident lies in the fact that the conditions which bring about the situation of the criminal act are usually accidental and not apt to occur again. Natural and social selection have eliminated from the race the majority of individuals with uncontrollable temper so that only under rare circumstances do we find serious crimes from this cause. Purely accidental crimes are rare and much that has been written about accidental criminals does not properly apply except in so far as there is a considerable element of accident entering into the commission of most crimes. This, however, does not justify their classification as accidental crimes. In this group, also, we included the person who violates the law deliberately from a high sense of duty. The difficulty of classifying these persons with criminals is shown by the reluctance with which they are considered guilty both in Europe and America. The problem involved in this consideration necessitates further consideration in a later chapter also.

This brief summary is sufficient to make apparent the fact which seemed important to the writer when the classification was made. If these divisions are arranged in order, beginning on the left with the insane criminal and proceeding toward the right, the interplay of internal and external causation appears.

#### FIGURE I

Insane criminal	Born criminal	Habitual criminal	Professional criminal	Occasional criminal	Passion or accident
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In the insane and born criminal the causation is seen to be entirely internal. In the criminal by passion or accident it is almost entirely external. Conceiving this as a broad generalization, internal causation is seen to decrease as we proceed from

left to right and external causation decreases as we proceed from right to left. The overlapping of these in the habitual, professional and occasional groups indicates the dual nature of the causation there.

FIGURE II

Internal causation				External causation		
Insane	Born	Habitual	Professional	Occasional	Passion or	Accident

#### 4. *Classification by Parmelee.*

In Parmelee's classification we see the results of a conspicuous effort to combine the findings of modern mental science, including psychology and psychiatry, with the findings of the positive school.<sup>34</sup> It is prefaced with a discussion of the difficulties involved in any classification,—short ones being too simple and long ones too complicated, not to mention the possibility of error in fact. Concluding this the writer says, "Notwithstanding these difficulties, and on account of the great practical need for a classification of criminals, I shall propose the following classification of criminal types, formulated in accordance with the above mentioned rules, and subject to modification by the advancement of science and human and social progress in general."<sup>35</sup>

1. The criminal ament, or feeble-minded criminal.
2. The psychopathic criminal.
3. The professional criminal.
4. The occasional criminal.
  - a. The accidental criminal.
  - b. The criminal by passion.
5. The evolutive criminal.
  - a. The political criminal.

The findings of relatively recent clinical and laboratory research have made here a definite impression upon a classification which otherwise bears the stamp of the positive school. The

<sup>34</sup> M. Parmelee, *Criminology*.

<sup>35</sup> *Ibid.*, p. 197 ff.



older classification of the insane here appears in the psychopathic criminal. This includes all criminals who commit crimes as a result of deviation from normal mental health and function. These will be discussed later. The recognition of the criminal with subnormal mentality provides a convenient classification which solves many problems of the "fool," the "imbecile," and the "morally blind" of the older classifications. It undoubtedly includes many formerly classified as insane also. From this point on, however, there is little to distinguish this classification from the familiar classifications already discussed. The reader will note the retention of the professional criminal, injecting in a causational classification a class based on method or attitude of the offender,—a violation of the "rules of classification" laid down by the author himself.<sup>36</sup> The occasional criminal group is made to include the accidental criminal and the criminal by passion. The term *evolutive* appears to have been developed to account for the political offender and numerous other persons who are in advance of the prevailing opinion or custom.<sup>37</sup>

The classification of Parmelee suffers to some extent from the same conditions which affected the earlier classifications. No doubt a more accurate knowledge of causation will serve to reduce still further the number of persons now included in his third, fourth and fifth groups. The conflict between the individual and society, especially in the case of the young, will, no doubt, be revealed with increasing clearness as being due to specific rather than to general causes.<sup>38</sup>

Certain more recent classifications of criminals which have broken with the earlier classifications under the pressure of modern clinical findings will be considered in a later chapter. This brief summary of familiar groupings of criminals serves to indicate what has been taking place in the development of

<sup>36</sup> M. Parmelee, *Criminology*, pp. 197–198.

<sup>37</sup> *Ibid.*, chap. XXVIII.

<sup>38</sup> P. A. Parsons, *Introduction to Modern Social Problems*, chap. V, especially p. 97.

modern criminal science. The break with the classical theory of criminology came with the study of the offender. Certain developments in the early stages of criminal science tended to fix the idea of a single factor in criminal causation. This was conceived of as within or without the person of the offender, giving rise to the hereditary and environmental schools. Under the influence of the developing mental sciences of psychology and psychiatry, the point of interest in causation began shifting from anatomy to the mind. The development of scientific social work and the modern "clinic" have made it possible to understand the interplay of internal and external influences. In spite of the philosophy of the environmentalists and the very great influence of much of what has been called social work, there is a definite swing away from general theories of causation toward the isolation of specific causes in individual cases of criminality.

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## V

# THE CONDITION OF THE CRIMINAL— ANATOMICAL

## I. LOMBROSO'S STUDY OF CRIMINALS

CESARE LOMBROSO's theory of the criminal type, like John Brown's body, lies mouldering in the limbo of dead theories, but his indomitable zeal for studying the offender goes marching on in a thousand clinics. As yet, most of the clinical work is devoted to the study of juvenile offenders. However, auspicious beginnings have been made in the field of adult criminality which promise results as revealing as those which have been secured in numerous studies of children.

In studying the condition of the offender, in search of the cause of crime, one is tempted to plunge immediately into the analysis of the fascinating processes of the modern clinics. A proper understanding of these processes, however, must be based upon a survey of the development of clinical study from Lombroso to the present. It is this study which has borne real fruit. In spite of the glowing claims for experiments in self-government, reformation, etc., practically all that we know about causation has been learned from first hand study of offenders by methods which we have come to call clinical.

Lombroso's approach to the study of criminals was casual. In 1864 he made a series of studies of the Italian soldier. He was first struck by the frequency with which soldiers were tattooed, especially the dishonest ones, and by the profusion and indecency of the designs which covered their bodies. Shortly after this he became interested in the study of insanity, but his research was applied to the bodies of the insane rather than to the disease. From this study of the insane, he turned



his attention to the study of the inmates of Italian Prisons.

In his study of criminals he was impressed with the frequency with which certain physical anomalies appeared in the bodies of criminals and epileptics. These anomalies, together with certain functional deviations and disorders finally led to his famous two-fold theory of atavism and degeneracy as the causes of criminal conduct. These deviations from normality Lombroso called the stigmata of crime.

The greatest number of stigmata appeared in what he called the born criminal. Lesser criminal types were characterized by fewer stigmata, and in those persons whose crimes were the result of external rather than internal conditions these anomalies were found in no greater number than would be encountered in members of the non-criminal population. He believed that these stigmata were not the causes of crime, but were, rather, the indications of atavism or degeneracy which he thought were the real causative factors.

Lombroso's clinical methods included post-mortem examinations, weighing and measuring various parts and organs, and various tests for living criminals to determine tactile sensibility, blood pressure, emotional reactions, sight, hearing, taste, smell, etc., as well as various forms of behavior such as slang, handwriting, and the use of stimulants. We need not give a full description of these methods here.<sup>1</sup>

The following partial summary of his findings is taken, in the main, from Mrs. Ferrero's digest of his works which was prepared especially for American readers.<sup>2</sup>

## II. STIGMATA OF CRIME ACCORDING TO LOMBROSO

### 1. *The skeleton.*

The *head* of the criminal is characterized not by any standard deviation which is peculiar but general departure from the

<sup>1</sup> Many of these are described in his *Criminal Man* and the accompanying Manual, and in numerous articles in *Archive pour l'anthropologie criminelle*.

<sup>2</sup> G. Ferrero, *Lombroso's Criminal Man*.

normal. Pronounced asymmetry is common. Skull capacity is larger or smaller than the average. The skull is frequently malformed or misshapen, with abnormal bumps, depressions and ridges. So-called wormian bones in the sutures are frequent. The occipital fossa common among violent offenders indicates reversion to primitive type. Low and receding foreheads are common and bony ridges over the eyes and prominent cheek bones are frequently found.

On account of the frequency of low, narrow and receding foreheads the lower part of the *face* often seems out of proportion, with protruding cheek bones and jaws. Prognathism, the protruding of the lower part of the face beyond the upper has been found in nearly 50 per cent of criminals while it is said to be present in normal individuals slightly in excess of 25 per cent. The massive jaw is a pronounced characteristic of criminals. On the other hand, underdevelopment of the jaw is not uncommon.

The *nose* is frequently enormous, protruding and crooked; a most repulsive type being a pug with fleshy nostrils, giving an upward cast to the countenance. Facial asymmetry is frequently found, one half of the face being higher than the other, the eyes out of alignment with the rest of the features, or the nose deviating to the right or the left from its central position.

Irregularities of the *teeth*, with a tendency to reversion to the long isolated teeth of the carnivora are found together with a tendency toward double front teeth.

An increase or decrease in the *number of ribs* has been found by some investigators to the extent of 12 per cent. The *pelvis* sometimes shows an inversion of sex characteristics.

A common characteristic of criminals is the excessive length of the *arms* as compared with the lower limbs. In some instances the span of the arms exceeds the total height of the individual.

Supernumerary or a reduced number of *fingers* are not uncommon phenomena. Criminals committing violent crimes against the person are found to have stubby fingers and a short



thumb; while thieves, swindlers pick-pockets and sexual offenders are found to have long fingers, a characteristic which has given rise to the popular designation for thieves as "long fingered gentry."

A protuberance survives in a number of cases at the head of the *femur* or thigh bone, showing a reversion to the hind limb of quadrupeds. Greater mobility of the *toes* frequently occurs and excessive length of the great toe with the *prehensile foot*, similar to the *quadrumana*.

## 2. *Anatomical anomalies.*

Facial anomalies of an anatomical character correspond more or less closely to anomalies of the skull or bones of the face. Excessive and premature *wrinkles* are common, especially in the forehead. The *ears* are often protruding and large, a type known as "handle ears." Frequently one is higher than the other, or of a different type. Sometimes the outer rim is wanting. Again the Darwinian tubercle shows extreme development in some cases and in others the whole ear comes to a pronounced point at the top. Absence of the lobe, or the adhesion of the lobe far down on the jaw bone is not infrequent.

Anomalies of the *eyes* are hard to describe but easy to distinguish. The hard expression of some criminals and the shifty glance of others are well known. Ptosis, a dropping of the upper eye-lid, which gives the individual a sleepy appearance, is frequently found in one or both eyes. Strabismus, commonly known as "squinting," is due to a want of parallelism between the visual axes. It is of little significance if due to astigmatism, but important when due to brain disorders. Asymmetry of the irises is found, and differences in color between them.

The *mouth* shows a number of anomalies which correspond to those of the jaws already described. An atavistic condition found in extreme cases is the fossa in the lower jaws where the canine muscle is attached by which the lips are drawn back,



exposing the teeth as in the dog. Sex offenders and those who commit crimes of violence against the person are said to have fleshy (sensuous) lips. Thin, straight lips, associated with avarice in the popular mind, are found in swindlers. Crooked and protruding teeth have already been mentioned. The hair-lip is said to be more prevalent among criminals than among normal persons.

Several atavistic characters as well as the stigmata of degeneration are found in the *palate*.

Persons who commit crimes of violence are said to be characterized by coarse, straight *hair*, more often black than otherwise. Male offenders commonly have scanty beards and many hairy women are found in prisons.

Defects in the *brain* structure and function are said to be common. Many of these are atavistic, still more of them are pathological.

*Left-handedness* is said to be more prevalent among criminals than among normal persons. There is also said to be a superior nervous and muscular development in the left half of the body.

*Lines* in the *palms* of criminals frequently differ from those in normal hands. In the normal person there are three lines, two transverse and one vertical or nearly so. In criminals the lines are often reduced to one or two as in apes.

*Polymastia*, or supernumerary nipples are not infrequent, the additional ones being placed symmetrically below the normal ones as in many mammals. *Gynecomastia*, or an attempt at functional activity of the breasts, is sometimes found in male offenders.

### 3. *Sensile and functional abnormalities.*

Exhaustive tests have shown criminals to be much more obtuse than normal persons in sensibility to touch and to pain, and abnormally sensitive to the magnet. In simple tests with the fingers a certain amount of obtuseness may be detected. In tests made with instruments on the tips of the fingers and the palms of the hand the results have been quite striking. Lom-

broso found 30 per cent of criminals tested to be unable to feel separately two points at a distance of four millimeters. Such obtusity was found in only 4 per cent of normal persons. Criminals were found to have greater sensibility on the left side than on the right.

Similar tests show criminals *insensible to pain* to a much greater degree than normal persons. Lombroso claimed to have found total insensibility or analgesia in 16 per cent of his cases.

Tests of *sensibility to the magnet*, a condition seldom found in normal persons, revealed nearly 50 per cent of criminals so sensible. Sensibility to barometric changes was noticed.

While *sight* is said to be more acute among criminals than among normal persons, *color blindness* is twice as prevalent among offenders as it is among the law-abiding.

*Hearing, taste and smell* are said to be below the average of normal persons in acuteness. While the criminal is supposed to be more agile than normal persons, tests by the dynamometer reveal his strength to be below normal. His love of idleness may be, in part, due to this cause. Among habitual offenders, as among tramps, aversion to work amounts almost to a mania. Long periods of want and privation and the risks of punishment for crime are preferred by them to honest toil.

#### 4. *Other characteristics of the criminal class.*

Among habitual criminals, natural *affections* are not highly developed. Love is of a degraded sort. In its highest form it is exceedingly rare. Singularly unmindful of the claims of its legitimate objects, the affection of criminals is often lavished upon illegitimate objects such as pets, paramours, or even strangers if sick or dying.

Among more violent criminals, *repentance* or *remorse* is rare. Bruce Thompson made a careful study of four hundred murderers. Only three of them expressed remorse. Despine is said to have remarked that nothing resembled the fabled



sleep of the just more closely than the slumbers of an assassin. Remorse is often feigned when the culprit hopes to obtain some benefit from it, but when he finds his simulation fruitless his real feelings assert themselves. Mrs. Ferrero cites the case of Rognoni, who, when tried at the assize of Pavia, pronounced a touching discourse on his repentance and refused the wine brought him in prison for some days because it reminded him of his murdered brother. He obtained it, however, surreptitiously from his fellow prisoners, and when one of them grumbled at having to give up his own portion, Rognoni threatened him saying, "I have already murdered four and I shall make no bones about killing a fifth."<sup>3</sup>

The *cynicism* of hardened criminals is well known. Many have been known to boast of their depravity. Notorious culprits have boasted of the publicity given to their deeds and appear greatly to relish the admiration of their less hardened fellow criminals. It is not uncommon to find criminals justifying their offenses on the ground that similar crimes committed by persons in more reputable walks of life have gone unpunished.

Closely related to the cynicism of criminals is their *vanity*. It is not uncommon for confessed criminals to magnify their offenses that they may appear more notorious. A famous safe-blower in New York flew into a passion when accused by the police of having done a "job" which to him bore every evidence of having been done by an amateur. Often the highest ambition of a criminal is to have his exploits described in the newspapers. It is not uncommon to find murderers during their trials less concerned with the verdict of the jurors than with the amount of publicity the trial is getting in the daily press.

*Untruthfulness* is universal among criminals, due, perhaps, to the lack of moral sense. Their great ambition is to "die game." Their *intelligence* is of a low order and shows a weird tendency to distort everything. This tendency is probably

<sup>3</sup> G. Ferrero, *op. cit.*, p. 30.



responsible for the fact that *slang* is so highly developed among criminals as to amount practically to a language of their own. We are told that French criminals possess seventy-two terms for expressing the act of drinking and thirty-six for money.

The *cunning* of criminals has been greatly over-estimated. It amounts mainly to dexterity in the performance of crime. Apart from this, their *stupidity* is astounding. Mace, a former chief of police in Paris, remarks that in spite of the cunning and tricks which are freely attributed to thieves, their stupidity generally is scarcely credible; they nearly all resemble the ostrich who, when his head is hidden behind a leaf, thinks he is not seen because he cannot see. Often the cunning of the criminal seems to be exhausted when the crime has been committed, the stupidity of his conduct thereafter frequently leading to his detection.

The popular concept of honor among thieves is far from reflecting the true condition among offenders. Rare cases of fidelity to comrades have been unduly exploited in print. *Treachery* is much more common. When a group of criminals is involved, it is often not difficult to find one who will gladly betray his fellows to save his own neck. Not infrequently we find criminals betrayed to the officers of the law by treachery for the sake of vengeance.

Lombroso made much of the practice of *tattooing* which he found to be much more prevalent among criminals than among normal persons. This he felt was an indication of atavism, since tattooing is prevalent among primitive peoples. It probably indicates a high degree of insensibility to pain, a crude form of vanity leading to unusual personal adornment, and, in a number of cases, it reveals a morbid condition of the emotions. Emblems of religion and crude portrayal of scenes from the brothel are found on the same individual. Speaking of this trait, Lombroso says: "Certainly one can say of tattooing as of all other characteristics of criminals, that one can meet them among normal people; but it is the proportion,

the diffusion, and the intensity which are indeed more salient; it is the specific shade, . . . the useless impudent vanity of crime which are lacking among honest people.”<sup>4</sup> Of the five hundred and seventy-three males whose records are given by Byrnes, two hundred and fourteen, over thirty-seven per cent, were tattooed.<sup>5</sup>

The *instability* of the criminal personality is well known. It is probably for this reason that *gambling*, and the love of *orgies*, and the prevalence of drink and drug habits are found among them. Yet more interesting than the resort to external stimuli and more significant of emotional instability are the spontaneous outbursts of excitement among criminals which have been studied by Dostoeffsky. After living a quiet and peaceful life for several years, prisoners frequently become uncontrollable and stop at no crime. It is a sort of desire to “affirm the degraded ego,” the personality “born out of its time.” The prevalence of immoral and indecent practices is a further evidence of the need for diversion and excitement.<sup>6</sup>

##### 5. *Lombroso's Methods Widely Adopted.*

The publicity given to Lombroso's studies resulted in the adoption of his methods of study by many students of criminology. From the investigations of a large and imposing group of scholars who accepted his theories in part, he was able to draw much corroborative material which he used freely in defense of his thesis. Equally significant, also, was the adoption of similar methods by his opponents who thought by use of them to discredit his theories. In consequence, regardless of what happened to his theories, the science of criminology was greatly enriched and the interest of scholars in Europe and America was fixed upon the criminal rather than upon his crime. The refutation of his theories was of little con-

<sup>4</sup> C. Lombroso, *L'anthropologie criminelle*, p. 91, see also his Manual published with *L'homme criminel*.

<sup>5</sup> Byrnes, *Professional Criminals of America*.

<sup>6</sup> H. Ellis, *The Criminal*, pp. 155 and 170.



sequence; the adoption of his methods was of far-reaching importance. It is for this reason that the enviable title of *father of criminal science* has been bestowed upon the eminent Italian scholar.

### III. THE FINAL TEST OF LOMBROSO'S THEORIES

The sweeping assertions of Lombroso were the object of a sharp attack. His opponents were at a disadvantage, however, by reason of his scientific attitude, which made it necessary to meet him with data of equal scientific weight. For a long time, such data was not forthcoming. One of the charges brought against him was that his theories were colored by his studies of a relatively small group of highly pathological offenders. It was thought that a more extended study of criminals of the rank and file, and an equal number of persons in the non-criminal population would show that there was no relation between anomalies or stigmata and criminality.

Part of the confusion was due, no doubt, to a certain amount of misunderstanding of Lombroso's own position, for he actually held that it was not the mere presence of stigmata which was significant, but, rather, their profusion in the case of typical criminals coupled with abnormal behavior.

In 1899, when the controversy over his theories was at its height, Lombroso challenged his opponents to select one hundred criminals and one hundred persons who were not criminals and subject them to comparative measurements to determine whether there was a criminal type. His opponents accepted this challenge, but owing to the inability of the contending factions to agree on the arrangement and conditions of the test, the experiment was not carried out.

The most exacting test of the findings of Lombroso and his followers was finally undertaken in England. Dr. Griffiths, an English prison official, began a study of the inmates of his institution with the intention of making a comparison with the non-criminal population. A change in the administration



placed Dr. Charles Goring in charge. With the assistance of other prison officials and Dr. Karl Pearson, the study of English prisoners was extended and carried on over a period of nearly eight years. During this time more than three thousand consecutive entrants to English prisons were studied. The study included very careful measurements of such physical traits as Lombroso and his followers contended were characteristic of criminals. The result of these studies were published in 1913.<sup>7</sup>

With regard to the criminal type, the findings were definitely negative as shown by the following quotation:

“We have exhaustively compared, with regard to many physical characters, different kinds of criminals with each other, and criminals, as a class, with the law-abiding public. . . . Our results nowhere confirm the evidence (of a physical criminal type), nor justify the allegation of criminal anthropologists. They challenge their evidence at almost every point. In fact, both with regard to measurements and the presence of physical anomalies in criminals, our statistics present a startling conformity with similar statistics of the law-abiding class. Our inevitable conclusion must be that there is no such thing as a physical criminal type.”<sup>8</sup>

One interesting finding of this study was that there was about the same difference in cranial measurements between the graduates of Cambridge and the graduates of Oxford as between the criminals and the law-abiding people.

### 1. *Lombroso's Influence in America.*

In spite of the general scepticism regarding Lombroso's theories, he is quite generally credited with being the founder of the method of studying criminals which has developed into the modern clinic. He lived long enough to see great progress made in criminal procedure in America, for not a little of which he took credit unto himself. In his introduction to his

<sup>7</sup> C. Goring, *The English Convict*.

<sup>8</sup> *Ibid.*, p. 173.

daughter's book he acknowledges a much more cordial reception of his ideas in America than in Europe, claiming as a result of the so-called Modern School the development of Elmira Reformatory, the probation system, the juvenile court, and the George Junior Republic.<sup>9</sup>

As we have seen, however, the factors making for much of this development had been in operation for many years, some of them independent of his theories, others antagonistic to them. In addition to the influence of Lombroso, clinical studies in America may be traced to several sources among which were the differentiation of the juvenile offender or delinquent from the adult criminal, the development of mental testing, and the discoveries of psychiatry and psycho-analysis. The development of mental testing led to the better understanding of the nature of feeble-mindedness; segregation of juvenile offenders from adults led to more careful efforts to discover the causes of their delinquency; and, as a result of these two, a distinction was made between mental inferiority, mental pathology, and that vague thing we still call defective personality. As Lombroso's atavistic monster faded into obscurity, these deviations from normal mental power and health and personality have loomed larger and larger in the crime picture.

#### IV. THE DEVELOPMENT OF CLINICAL STUDIES IN AMERICA

The abandonment in children's cases of the greater part of formal legal procedure opened the way to an informal study of the child as well as of the conditions of his delinquency. This made possible the adoption of desirable procedures which have not yet been tolerated for adult offenders. The extensive employment of social workers trained in family case work methods as probation officers has made possible the social history and case study. Mental tests, medical examinations, and psychiatric studies have followed to complete the modern clinic.

<sup>9</sup> G. Ferrero, *Lombroso's Criminal Man*, Intro. xix, f.



These developments have come by degrees and in an interesting manner. We are now witnessing the beginnings of the use of clinical methods in the study of adult criminals. Some of these studies have already given us additional light on the physical conditions of the offender and need to be considered in this chapter.

## V. PHYSICAL CAUSES OF MISCONDUCT

The large percentage of criminals suffering from physical disabilities is attested by reports from penal institutions throughout the country. During the administration of Dr. Katherine B. Davis, arrangements were made to give all the inmates of New York City correctional institutions the same physical examination as that required for the United States Army. In the Reformatory for Male Misdemeanants of New York City, where the inmates average barely twenty years of age, only 8 per cent passed the required physical examination. In the Penitentiary where the average age was greater, only 5 per cent passed the required examination. In the work-house where those who are "down and out" are to be found in large numbers, only one per cent passed the required examination.<sup>10</sup>

All studies that have been made of offenders passing through the lower courts show a startling number of individuals suffering from acute and chronic physical diseases such as tuberculosis, Bright's disease, asthma, heart disease, syphilis and gonorrhea. The vital importance of the early recognition of these conditions cannot be over-estimated. Their relationship to an individual's industrial efficiency and through this to his delinquency may be seen from the studies made at the clinic of the Boston Municipal Court.<sup>11</sup>

<sup>10</sup> V. V. Anderson, *Mental Disease and Delinquency*, Nat. Com. for Mental Hygiene, Reprint No. 50.

<sup>11</sup> V. V. Anderson and C. M. Leonard, "A Study of the Physical Condition of One Thousand Delinquents Seen in Court," *Boston Medical and Surgical Journal*, June 13, 1918, quoted by Anderson *supra*.



A group of 1000 delinquents was studied with the purpose of determining what part, if any, routine physical examination might play in the disposition of a delinquent case in court and later in the institutions or in reconstructive measures while on probation. It was found that 85 per cent of those in good or fair physical condition had been and were still self-supporting, while only 18 per cent of those found to be in bad or poor physical condition had been and were self-supporting; that 96 per cent of those regularly employed were in good or fair physical condition while only 4 per cent were in poor or bad physical condition; and that 86.3 per cent of those who were rated as "never worked" were in poor or bad physical condition. The chances of being self-supporting were more than four to one in favor of the individual in good physical condition. Further, 47 per cent of these individuals, or practically every other person, showed positive evidence of syphilis or gonorrhea.

## VI. GLANDS IN RELATION TO PHYSICAL CONDITION AND CONDUCT

Considerable attention has been given recently to the influence of the so-called ductless glands upon conduct. Thus far, very little has been found that has a direct bearing upon criminal behavior. The following information, however, is reminiscent of the days of Lombroso. It seems to have some significance for our study. The thymus gland, which seems to perform some important function in infancy, is a large gland projecting downward along the wind-pipe under the thorax. At an early age, this gland ceases to function in normal persons and atrophies to a mere rudiment. In rare instances it fails to cease functioning and continues active in the body of the adult. Such a case is known as persistent thymus. Dr. S. J. Morris made a post-mortem examination of 193 criminals in which he found 22 cases of persistent thymus. Twenty of these were from the state penitentiary and

seventeen of them were murderers.<sup>12</sup> No doubt Lombroso would have classified them as born criminals.

## VII. GROWTH OF INTEREST IN MENTAL CONDITION OF THE OFFENDER

Before we consider the fairly well-rounded picture of the criminal which clinical studies are now providing us, we shall give some attention to a theory of criminality, which, in the boldness of its assumptions, is second only to that of Lombroso. Due, however, to the much greater advancement of criminal science when it made its appearance, it was destined to be much more quickly modified. We have reference to the theory that the chief cause of criminality had been discovered in feeble-mindedness. This theory will be discussed in the following chapter.

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<sup>12</sup> E. H. Williams and E. B. Hoag, *Our Fear Complexes*, p. 224 ff.

## VI

### THE CONDITION OF THE OFFENDER— PSYCHOLOGICAL

#### I. MENTAL DEFECT AND CRIME

It is only in recent years that the psychological condition of the offender has come in for serious consideration. The development of mental tests dates largely from 1905, although Binet had been working on this subject for the previous ten years and some experimental work had been done in this country, notably by Cattell. Since those early days the testing movement has spread until now every one is more or less familiar with its purposes and possibilities. It was natural that after school children had been extensively tested attention should be turned on the offender. If feeble-mindedness was a factor making for maladjustment in school it was felt that it might also make for maladjustment in the outside world and that it might prove to be the great explanation of delinquency and of anti-social behavior generally.

Feeble-mindedness has been variously defined. Doll regards it as "a condition of arrested development, specifically of the general intelligence, which limits the individual to mental capacity not exceeding that of twelve-year-old normal children."<sup>1</sup> It has also been defined as "mental incapacity for adaptation to environmental demands." Goddard and others have pointed out that feeble-mindedness is relative, rather than absolute, and depends finally on the social standard. It is concerned with adequate responses to environmental stimulation, and ob-

<sup>1</sup> Doll, E. A.: *Clinical Studies in Feeble-mindedness*. Boston, Badger, 1917.



viously the adequacy of the response will vary with the difficulties of the environmental situation. Thus in totally different cultures the level of feeble-mindedness would be set at different points. Intelligence itself is a biological matter, but the standard of intelligence required to get along in any given society varies with the development of society. For the purpose of classifying school children and adult defectives in our western civilization certain arbitrary standards have been set down. The most common classification of mental defect is that of idiot, imbecile and moron. These terms may be defined by the mental age of the individual, an idiot being considered in the United States to have a mental age up to two years, an imbecile from three to seven and a moron from eight to twelve.

The British Royal Commission has defined an idiot as "a person so deeply defective in mind from birth, or from an early age, that he is unable to guard himself against common physical dangers." An imbecile is "one who, by reason of mental defect existing from birth, or from an early age, is unable to earn his own living, but is capable of guarding himself against common physical dangers," while in the third category falls the man or woman "who is capable of earning a living under favorable circumstances, but is incapable from an early age, (a) of competing on equal terms with his normal fellows; or (b) of managing himself and his affairs with ordinary prudence." From the legal standpoint one of the most difficult classifications is that of the so-called "dull normal," persons who are almost up to the average level but not quite, who seem almost as responsible as other persons yet actually are not. Often, too, such individuals seem entirely responsible along one line of conduct and not at all responsible for other actions.

The realization of marked individual differences in intelligence, and the light which this shed upon the problem of criminal activity, led to the formulation of the theory of feeble-mindedness as a major cause of crime. Thus, as Lombroso's theories declined in vogue a new school arose to explain the

causes of crime. H. H. Goddard was among the most vigorous exponents of the theory of feeble-mindedness. Early tests showed a very high percentage of feeble-mindedness among certain groups of offenders. The figures collected by Goddard vary from 28 per cent to 89 per cent and he did not hesitate to declare that the higher figures would probably be found most accurate. The following table is taken from his book on *Feeble-mindedness*. The figures are not always those given by the original investigators but represent Mr. Goddard's interpretation of the different studies.

#### FEEBLE-MINDEDNESS <sup>1</sup>

Institution	Per cent Defectives
St. Cloud Reformatory, Minnesota, .....	54
Rahway Reformatory, New Jersey, .....	46
Bedford Reformatory, New York, under eleven years, .....	80
Lancaster Girls' Reformatory, Mass., .....	60
Lancaster, Mass., Fifty paroled girls, .....	82
Lyman School for Boys, Westboro, Mass., .....	28
Pentonville Juvenile Reformatory, Ill., .....	40
Mass. Reformatory, Concord, .....	52
Juvenile Court, Newark, New Jersey, .....	66
Elmira Reformatory, New York, .....	70
Geneva, Ill., .....	89
Ohio Boys' School, .....	70
Ohio Girls' School, .....	70
Three Reformatories in Virginia, .....	79
New Jersey State Home for Girls, .....	75
Girls in Glenn Mills Schools, Penn., .....	about 72

## II. CRITICAL EVALUATION OF THE THEORIES OF GODDARD AND OTHERS

Not since the early estimates used by Goddard have there been any but scattered and isolated studies which have found percentages as high as 50 per cent. One exceptional study, that of Hickson in the Boys' Court in Chicago, found that 84 per cent of 245 boys studied were distinctly subnormal.<sup>2</sup> This

<sup>1</sup> H. H. Goddard, *Feeble-mindedness*, p. 9.

<sup>2</sup> W. J. Hickson, "The Defective Delinquent," *J. Criminal Law*, Sept. 1914, pp. 397-403.



appears to have been a study of a highly selected group of offenders, as is indicated by Bronner's report of a study of 505 boys and girls in the detention home of the juvenile court of Cook County in Chicago, her tests revealing less than 10 per cent to be feeble-minded.<sup>3</sup> Two important studies, the results of which were published about the same time as those of Goddard, convinced their authors that the percentage of feeble-mindedness among English criminals is not in excess of 20 per cent.<sup>4</sup>

At the Bureau of Juvenile Research, Columbus, Ohio, Haines studied 1000 cases, 671 boys and 329 girls. The Stanford revision of the Binet-Simon tests showed 50 per cent feeble-minded; the Yerkes-Bridges 29 per cent. Haines' estimate on the basis of these figures was that 24 per cent were undoubtedly feeble-minded.<sup>5</sup> Bowers found 23 out of 100 prisoners studied in Indiana State Prison to be feeble-minded.<sup>6</sup> Williams studied 215 boys in the Whittier State School in California and found 32 per cent were feeble-minded.<sup>7</sup>

Healy made a careful study of repeaters from the Juvenile Court in Chicago. After considering a thousand cases he commented as follows: "As beyond per-adventure feeble-minded we found about 10 per cent, but the figure will be increased as some of the younger in the lower groups fail to advance with age."<sup>8</sup> With reference to feeble-mindedness among criminals generally, he writes: "Just what percentage of delinquents are feeble-minded, appears to be a matter of perennial interest, but well-founded statistics, even if obtained in particular places, may not be applicable to different situations.

<sup>3</sup> A. F. Bronner, "A Research on the Proportion of Mental Defectives Among Delinquents," *J. Criminal Law*, Nov. 1914, pp. 561-568.

<sup>4</sup> A. F. Tredgold, *Mental Deficiency*, and C. Goring, *The English Convict*.

<sup>5</sup> T. H. Haines, *Mental Examination of Juvenile Delinquents*, Pub. No. 7, Ohio Board of Administration, Dec. 1915.

<sup>6</sup> P. E. Bowers, "The Recidivist," *J. Criminal Law*, Sept. 1914.

<sup>7</sup> J. H. Williams, "Intelligence and Delinquency," *J. Crim. Law*, Jan. 1916.

<sup>8</sup> W. Healy, *The Individual Delinquent*, p. 447.



There can be no doubt that separate reformatory or prison populations if tested would show from ten to thirty per cent or even more to be feeble-minded. . . . No essential purpose is subserved by exaggerated statements concerning proportions which might be found in court work, or in various penal institutions.

Sutherland states that "there is little to justify the conclusion that criminals differ appreciably from non-criminals." In fact so little importance does he attach to the whole question of mental deviation that he gives it only a few pages in four chapters on causation. Although Parmelee devotes much more space to the consideration of *aments* he arrives at the very cautious guess that feeble-mindedness is found in from five to ten per cent of criminals.<sup>9</sup>

Cyril Burt declares that he cannot concur in the view that a defective mind is the commonest cause of crime, for in his experience "both facts and figures seem in recent studies to have been wildly overstated."<sup>10</sup> Using the Binet-Simon scale Burt finds 8 per cent of the juvenile delinquents in London to be mentally defective, that is, retarded by three-tenths of their chronological age. However, he points out that this low figure "still reveals among the delinquent population a proportion of mental defectives five times as great as among the school population at large." Here, of course, lies the crux of the matter. Early investigators had little data for normals with which to compare their results. Feeble-mindedness among delinquents to the same degree as in the population at large would of course have no significance for us in our search for the cause of crime, but feeble-mindedness to a higher degree might be an important indication. Burt feels that this is indeed an important aspect and concludes that "mental defect, beyond all controversy therefore, is a notable factor in the production of crime."

Even this concession, which would seem very little to the early exponents of the feeble-minded theory, is extreme from the standpoint of some American investigators. Murchison, in a

<sup>9</sup> M. Parmelee, *Criminology*, p. 170.

<sup>10</sup> Burt, Cyril, *The Young Delinquent*. D. Appleton and Co. 1925.

study not entirely accepted, found a higher percentage of college men in the prisons than in the general population. Since the Army studies have provided new forms by which to rate adults comparisons have been made by Doll, Adler and others, pointing out the fact that no observable differences are revealed between the prison population and the adult male population. It seems probable, therefore, that we shall have to give up feeble-mindedness as a primary cause of crime in general. More detailed studies are necessary to find out the incidence of feeble-mindedness among criminals of special classes. Observations alone along this line have already been made to a certain extent. Thus, as Burt points out, there are many crimes which we cannot expect from the mentally defective, for there is "an upper limit to the criminal ingenuity of the truly feeble-minded. There are certain crimes which a defective of whatever age can hardly ever carry through. He seldom forges; for he can scarcely write and barely spell. He seldom embezzles, for the arithmetic of all but the simplest transactions in money lies wholly beyond his reach. Fraud, too, where it rises above mere verbal misrepresentation, needs planning and resource; and even a coiner or receiver must have more sense and wiliness than will suffice for the practices of the petty thief. On the other hand, there are certain faults to which the half-witted seem particularly prone. Among children reported for vagrancy, defectives are nearly three times as numerous as normals. Among boys reported as beyond parental control, the percentage of defectives is nearly as high. Among adolescent defectives, sexual misdemeanors occur out of all proportion. To add violence to robbery is eminently characteristic of the deficient mind, and, among murderers, defectives are twice as common as among those whose personal violence takes a less extreme and desperate shape."<sup>11</sup>

Burt concludes that "the misdeeds of a defective mentality are those of blind and childish impulse rather than of intel-

<sup>11</sup> *Idem*, p. 10.



ligent deliberation.” He holds that the influence of mental defect as pre-condition of crime is negative rather than positive, for by itself mere lack of intelligence can scarcely furnish a motive for wrongdoing. “If a delinquent is genuinely defective, the criminal suggestion must either first have reached him from some outside source—a base companion or a ‘crook’ film—or else have developed from some inner instinct or impulse, such as easily expands, in a head that is empty, but excitable, to an excessive and uncontrollable passion. The deficiency itself simply removes some of the usual checks, which, based on prudence and rational insight, keep a moral mind from giving rein to such promptings.”<sup>12</sup>

Burt’s view does not differ greatly from that of Sands and Blanchard who declare that “while mental deficiency is not in itself a primary cause of anti-social conduct, under certain conditions it does become a contributing factor in the production of conduct disorders. The characteristics of suggestibility, inadequate judgment, defective foresight, etc., which are typical of the mental defective predispose him easily to drift into delinquency under the influence of bad associates. If his mental defect is combined with an excitable and emotionally unstable personality make-up his potentiality for anti-social behavior is enhanced, for he is liable to outbursts of temper which his defective mentality sees no necessity of controlling.”<sup>13</sup>

Thus we would expect to find among the criminal population a number of mental defectives, whose condition of defect is more or less related to their crime, but in any particular case we may expect to find some external factor playing the determining rôle to a very high degree. We should, of course, logically expect that a larger percentage of feeble-minded criminals than of superior-minded ones will be apprehended, and so we cannot conclude that the distribution of intelligence in

<sup>12</sup> *Idem*, p. 298.

<sup>13</sup> Sands, I. J., and Blanchard, Phyllis, *Abnormal Behavior, Pitfalls of our Minds*, N. Y., Moffat Yard, 1923, p. 80.



any prison population would justly represent the intelligence of the criminal class as a whole.

One of the most encouraging aspects of the problem of the feeble-minded criminal is the fact that the feeble-minded can be trained so that they are not only not dangerous to society but are actually useful, for, as Hoag and Williams <sup>14</sup> point out, "while the unrecognized feeble-minded are often potential criminals, yet it is true, as the Juvenile Protective Association in Chicago says, that it has been proved in thirty or more states that defective children taken in time are amenable to certain training which makes them reasonably safe members of society under proper control, but it is just as certain that without training and proper control the defectives will continue to swell the numbers not only of the feeble-minded, but of the insane, the destitute, the drunkards, the prostitutes and the criminals. Nothing that we can do in caring for this class of defectives is nearly so costly as the results of our neglect in not caring for them."

The work of the Massachusetts State School for the Feeble-minded and its success in returning promising inmates to the community points the way to a prevention of a considerable part of the crime committed by the feeble-minded. The tables below, first presented by Dr. Fernald in a report in 1916, show the high percentage of satisfactory adjustments made by the defectives after release from the school:

Males	
Earning a living without supervision .....	28
Working for wages, supervised at home .....	86
Working at home, no wages .....	77
Living at home, not able to work .....	59
Arrested, but not sentenced .....	23
Sentenced to penal institutions .....	32
Committed to other institutions .....	43
Readmitted to Waverly .....	68
Died .....	54
<hr/>	
Total .....	470

<sup>14</sup> Hoag, E. B. and Williams, E. H., *Crime, Abnormal Minds and the Law*, p. 67.

Females	
Married (11 doing well) .....	27
Self-supporting and self-controlling (unmarried) ...	8
Working at home under supervision .....	32
Living at home, not able to do much work .....	23
Committed to other institutions .....	29
Readmitted to Waverly .....	33
Died .....	24
—	
Total .....	176

Some of the men paroled from the Waverly School, after periods of training lasting from two to fourteen years, showed themselves capable of earning salaries ranging from nine to thirty dollars a week. We have no way of knowing how many of these mental defectives would have found their way into crime if they had not been salvaged by a long period of training which gave them settled habits of response and industrial skill sufficient for them to earn all or part of their own living, but we do know that the feeble-minded individual lacking habits of work is far more potentially criminal. The feeble-minded criminal seems to offer one of the most promising points of attack for those who wish to reduce the incidence of crime in the general population. Mental defect is largely hereditary, but mental defect alone does not create criminals. We can do little about the defect itself but there is much to be done in the way of habit-training of defectives which shall make them into useful members of society. The following cases of mentally defective criminals point, not to the guilt of these criminals, but to the guilt of society.

### III. CASES OF FEEBLE-MINDED CRIMINALS

1. *A Homicide.* T. H. Haines gives an account of a feeble-minded murderer whom he encountered in a Mississippi jail during a survey of mental deficiency undertaken for the National Committee for Mental Hygiene. This man of thirty-seven was found unable to repeat four numbers or to tell you the value of coins, estimating that a nickel is worth more than a dime because it is bigger. His mental age proved to



be five years and nine months, and he was accordingly classified as an imbecile. Yet when given one of the advanced tests for comprehension he answered the question: "Why should we judge a person more by his actions than by his words?" with the statement: "You can tell pretty well what kind of a fellow he is by what he does. He may tell you one thing and me another." This degree of appreciation of social situations is something far beyond his general mental level, and is an argument in favor of the contention that he knew what he was doing when he brutally murdered his father-in-law and that therefore he should answer to the law for his crime. However his condition of mental defect saved his life. From the time of the murder to the transfer of the murderer to the penitentiary this man cost the state and county upwards of \$2500. As Dr. Haines concludes:<sup>15</sup>

"The horrible nature of this crime, its cost to the community and the state, both in the loss of the life of a citizen and in the cost of litigation and confinement of the offender, emphasizes the necessity of recognizing congenital mental deficiency on the same plane as mental disease as a ground for unaccountability for offenses. It emphasizes the social economy of adopting means of preventing such grown-up children as John Brady being at large and having full responsibility for their actions, and, presumably, for their performance of duties as members of a democratic society. The mentality of a child of six years, even if that child is a species of genius in regard to appreciation of social situations, is not able to guide him through the intricacies of our complex social life. Such an individual is not a real person in any sense of the word. It is not right to entrust him with the privileges and the liberties of a citizen in a democracy, and, most of all, it is not right to allow him to propagate his kind and bring feeble-minded children into the world for the rest of us to take care of."

2. *A Delinquent.* A case of dullness which might have led directly to crime is given by Burt.<sup>16</sup> A boy named Jim was

<sup>15</sup> Haines, T. H. "A Feeble-Minded Homicide in Mississippi," *Report*, National Committee of Mental Hygiene.

<sup>16</sup> Burt, Cyril. *The Young Delinquent*, pp. 312-316.



brought from one of the slums of London charged with a sexual misdemeanor of a particularly senseless kind. This boy was fifteen and a half with a tired, puffy look and his "want of energy and moral strength, his crude and cow-like intellect, his coarse but not ill-natured instincts, seemed plainly legible on his face." Tested, this boy was found to have a mental age over eleven and a half, but his reading and spelling were those of a child of ten and his arithmetic that of a child of eight. After examination Jim was sent to a farm-colony for juvenile delinquents where the discipline was entirely free. During the first week his color improved and his fatuous smile began to disappear. One of his first inquiries was in regard to the girls available and he began to make advances to the girls at the colony. When these flouted him he took up with a pair of boorish dairy-maids in the village, much to the resentment of the little colony, which had developed its own standards of behavior. The superintendent, however, far from forbidding his philanderings, encouraged him to invite these girls to tea one Sunday afternoon. The visitors were plainly self-conscious and their dress and manners were the scandal of the aristocrats of the colony, so much so that Jim was greatly mortified, refused to go out with the girls and so earned their dislike. After a few days he decided to end his grief by swallowing ink and paraffin. He was allowed to consume as much oil and ink as he desired, and the superintendent and Burt sat up all night watching his irresolute attempt to drown himself in a stream nearby. As they expected, the first touch of cold water awakened his fears. After this crisis Jim's career took a new slant. "Like a somewhat unintelligent dog, he learnt from these bitter experiences far more than he had ever done from hours of pious expostulation, or of drastic punishment." After moping for a time he betook himself to digging alone in the garden. After a period at the colony he was sent back to London, provided with a job as porter, and now has a splendid record. His very stupidity caused him to distinguish himself in a heroic

way. He was on duty when the station hotel was bombed by a German aeroplane. Too stupid to realize the danger of what he was doing he kept his senses when more intelligent persons lost theirs and as he was good-natured he proved of signal service to many of the wounded. He was appropriately rewarded and this recovery of self-respect was a further great factor in his rehabilitation.

3. *A Pervert.* A particularly terrible case is given by Hoag and Williams. A boy of twelve was found brutally murdered near the city of Santa Anna. A degenerate of the community was soon suspected and his guilt was easily demonstrated. The man of thirty had enticed the boy to ride in his automobile, had conducted him to a hovel on his chicken ranch, decapitated the boy, hid the body in a swamp and put the head under a bridge.

“The point of the story of the case,” as the authors say, “lies in the following established facts: This man had some years before been arrested for a similar assault on a young boy but without murder, and had served a term in the penitentiary. At this time no mental test was made. And after a short term he was released. Following various minor delinquencies, this man was found both feeble-minded and insane and was committed to the State Insane Hospital, only to be soon released. His next serious offense was the murder already described. This man and his equally defective mother were well known to the police. Both had long police records; both were alcoholic; both were mentally defective and degenerate. And yet this man was given his liberty, with such a proof of degeneracy, crime, alcoholism and mental defect. No one could possibly argue for anything but death for such a human monster as this one; yet if he had been properly studied and placed in some institution early in life, no crime need ever have been committed, no innocent child murdered.”

In this case we have the complicating factors of mental disease as well as of mental defect, and perversion imposed upon both. It is obvious that the latter characteristic must be considered the motivating force, while the mental disease and



mental defect were merely contributory causes. Conduct disorders in such cases are motivated by multiple factors, but the discovery of any one of several should have proved sufficient to isolate this man permanently in a place where he could do no harm.

4. *A Defective Girl.* Sands and Blanchard give a number of cases of defective girls. As might be expected the suggestibility of the feeble-minded girl makes her particularly liable to be seduced by unscrupulous men and many of the delinquencies of such girls are of a sexual nature. This does not mean that the feeble-minded girl is more highly endowed sexually than her more intelligent sister but simply that she does not have the same inhibitory forces at work in her since she cannot foresee the results of her conduct. Similarly, lacking such foresight, she takes fewer precautions to protect herself so that the percentage of sexual delinquencies discovered among the feeble-minded is probably much nearer the total than is true of such discoveries among those of average and superior intelligence.

Mary M. was brought to the hospital from the Municipal Lodging House in a condition of pregnancy. She gives a typical mental defective history. Her mother is herself somewhat defective. Mary was retarded in physical and mental development in both infancy and childhood. She did not walk and talk until she was more than two years of age. In school she repeated grades habitually and had only reached the sixth grade at the age of 16. Her mother had placed her for a time in an institution for mental defectives and after a period of training she had been released on parole. At the end of her parole period she ran away from home, and when found by her mother at the Municipal Lodging House was in a pregnant condition. She was twenty-one years of age at this time, but her mental age proved to be only seven years six months. Her memory was poor and her judgment entirely inadequate. She was able to read a little but seemed to have no conception of the meaning of anything which she read. Her attitude was simple and childish. There could be no doubt



that her mental defect was at the root of all her difficulties.

5. *A Victim.* Dr. Wembridge<sup>17</sup> has given as impressive and affecting picture of a feeble-minded criminal as we need to seek. Multiply her David by thousands and we gain some idea of the manner in which society victimizes these unfortunates. The anonymous autobiography called *Haunch, Paunch and Jowl* contains a similar picture of a feeble-minded, good-natured boy who stumbled into murder. Dr. Wembridge writes:

“It was my duty at one time to interview a young man . . . on trial for the murder of a policeman. The little fellow had been part of a hold-up party, in which he was either the cat’s paw for cleverer members of the group, or had misunderstood directions, or was too drunk to know what he was doing—or any one of several explanations, none of which could he give himself. He was gentle and good-natured, simple and entirely vague as to the whole affair, for which he was later electrocuted. Even the bailiff, inclined to be severe over the murder of an officer on duty, looked at the mild little murderer with some misgivings.

“‘It seems hard that policemen must be at the mercy of stupid little fellows like David, and hard that the first notice anyone takes of David is to electrocute him,’ I remarked.

“The bailiff peered at him in doubt. ‘Can I do anything for ye, Dave?’ he inquired gently, but murmured in an aside, ‘He ain’t got a chance. He shot him all right and before witnesses, and that gets the chair.’

“Then he puffed away down the corridor, shaking his head, while Dave smiled pleasantly, and remarked, ‘I’m off the booze, all right. Excuse my necktie.’ The policeman’s widow, and Dave’s widow, the policeman’s orphans and Dave’s orphans, the arrest, the trial, the chair—all were there because David could not exercise the foresight and imagination which he did not possess, respect the law which he could not grasp, and think quickly in a new emergency when he could not think at all.

<sup>17</sup> Wembridge, E. R.: “The People of Moronia,” *The American Mercury*, Jan. 1926, p. 7.

His children will go through the same routine, and we all foresee it—all but Dave. He meditates upon his necktie, and then is seen no more.”

#### SELECTED REFERENCES

For bibliography see end of chapter VII.

## VII

### THE CONDITION OF THE OFFENDER— PSYCHOLOGICAL (*continued*)

#### I. PSYCHOPATHOLOGY AND CRIME

THE anti-social conduct of the criminal may be due to a variety of causes, as we are beginning to see. Insanity has long been recognized as a cause of crime but the legal and medical conception of mental disorder is so different that a great many persons are held legally responsible for their actions although they are really diseased mentally and incapable of making correct judgments. It is comparatively easy to recognize the homicidal maniac or the epileptic who during an attack of his disease commits a crime of ferocity of which he would normally be incapable, but it is very difficult indeed to bring a layman to realize the dangerous state of irresponsibility of, say, the paranoiac who is able to argue brilliantly, conduct the majority of his affairs with discretion, reply sensibly to questions and is at the same time the victim of a fixed delusion which to him justifies his crime.

The general medical term for mental disease is psychosis. A psychosis is a disease of the mind causing the loss of personality of the individual. It is frequently said that the psychotic individual has no insight into his condition. Some of the psychoses are known to have an organic cause, and in these definite anatomical changes in the brains of the patients may be observed. Such changes may be due to injury to brain tissue, to the effects of drugs or of germs, or to the onset of senility. Examples of these are senile psychosis, psychosis with arteriosclerosis, and paresis. It may be that the epileptic insanities should be grouped here, but no definite



statement can be made of this until a cause of the various epilepsies is established beyond question. The majority of the important psychoses, however, fall within the psychogenic class, that is, the class for which no adequate explanations are to be found in the structural alterations of the brain or other tissue. Here we have dementia praecox, in its various forms, the manic-depressive psychoses, involutional melancholia and paranoia.

Various classifications of the psychoses have been made, and as our knowledge increases new ones will doubtless be made. Southard's classification has the advantage of comprehensiveness. The following table, using his groupings, will give some idea of the relative importance to criminology of the various mental disorders.<sup>1</sup>

Psychoses of First Admissions of Criminal Insane  
to Matteawan Hospital, New York,  
From Oct. 1, 1922, to July 1, 1923

Psychoses	Number			Per Cent		
	Male	Female	Total	Male	Female	Total
Syphilopsychoses	139	16	155	14.4	8.4	13.4
Hypophrenoses (feeble mindedness with psychosis)	69	19	88	7.1	10.0	7.6
Epileptoses	23	5	28	2.4	2.6	2.4
Pharmacopsychoses (mental defect caused by alcohol and drugs)	164	39	203	17.0	20.5	17.5
Encephalopsychoses (brain disease)	8	2	10	0.8	1.0	0.9
Somatopsychoses (bodily disease)	—	1	1	—	0.5	0.1
Geriopsychoses (old age)	24	9	33	2.5	4.7	2.8
Schizophrenoses (dementia praecox)	344	44	388	35.4	23.2	33.4
Cyclothymoses (manic-depressive)	49	23	72	5.0	12.1	6.2
Psychoneuroses	1	—	1	0.1	—	0.1
Psychopatoses (dubious and special psychopathies)	149	32	181	15.3	17.0	15.6
	970	190	1160	100	100	100

<sup>1</sup> Table from *Mental Disorder and the Criminal Law, A Study in Medico-sociological Jurisprudence*, by S. S. Glueck. Boston: Little, Brown, 1925, p. 326.

Glueck finds the most frequent contributors to criminal conduct to be the syphilopsychoses, especially paresis, psychoses accompanied by mental deficiency, pharmacopsychoses, especially alcohol, dementia praecox, manic-depressive psychosis and psychopathic inferiority. Many of the forms will be described later.

A table prepared by the New York State Hospital Commission shows the relation between crime and the psychoses, at least for a limited group of 646 patients.<sup>2</sup>

Per Cent Distribution of Crimes Among Clinical Groups (646 Patients) Per Cent of Total Crimes							
	Senile Paralysis	General Alcoholic	Manic- Depressive	Dementia Praecox	C. P. I.	With Mental Deficiency	
Homicide	—	2.9	17.6	2.9	32.4	14.7	17.6
Assault	—	3.8	24.1	7.6	25.3	17.7	6.3
Burglary	—	13.2	—	7.9	39.5	23.7	5.3
Larceny	1.3	22.8	5.1	6.3	24.1	15.2	7.6
Public Intoxication	2.9	2.9	70.6	—	5.9	5.9	—
Disorderly Conduct	2.4	13.4	17.1	12.2	17.1	17.1	7.3
Vagrancy or Prostitution	8.5	15.4	13.8	4.3	35.1	6.9	7.4
All crimes	3.6	11.5	16.9	7.3	25.5	14.7	7.4

Under crimes of violence the alcoholic, dementia praecox, psychopathic and mentally defective make the largest showing. Offenses of senility are mostly disorderly conduct and vagrancy. In the previous chapter a case was given showing the particularly brutal crimes to which mental defect and psychosis combined may lead. Those personality defects grouped under the term of constitutional psychopathic inferiority likewise cause a tendency toward acts of violence.

## II. THE PSYCHOSES OF MAJOR IMPORTANCE TO CRIMINOLOGY

1. *Dementia Praecox.* This is the most important of the psychoses, both because it constitutes the highest percentage

<sup>2</sup> *Idem.*

of mental diseases and because recovery is so extremely rare. It may begin anywhere from fifteen to forty-five years of age, the most probable period being twenty to thirty, just when the individuals should be contributing most to society. Dementia Praecox has been called the criminal psychosis *par excellence*.

This psychosis is characterized by a splitting of the personality, emotional apathy, inability to carry out purposes, a gradual mental deterioration, and outbursts of temper which may result in violent crimes. Individuals with the so-called "shut-in personality" are regarded as most prone to develop this type of psychosis. Such a personality is characterized by sensitiveness, stubbornness, reticence, seclusiveness, inability to make friends readily, and inability to adapt to new situations. When new situations demanding unusual adjustments are encountered an actual psychosis is apt to be precipitated. Dementia Praecox patients show defects of interest, blunting of the emotions, silliness, serious defects of judgment, development of fantastic ideas, odd and impulsive conduct, dream-like states, a belief that they are being forced to do things or are being interfered with by some mysterious outside influence. The Hebephrenic Form is commonly manifested in puberty and takes the shape of silliness, peculiar mannerisms, uncleanliness and sometimes impulsive conduct. There is a complete absorption of the individual in his own ideas and the outside world comes to have no apparent meaning. The Simple Type is the mildest form and is characterized by steadily increasing loss of interest, by ideas of reference, by ideas of derogation and by delusions of persecution. The Catatonic Type covers those cases marked especially by a rigid state of limb and body and reactions to various types of hallucinations. In the Paranoid Type we find marked delusions and hallucinations, ideas that the patient is being persecuted and that his life is in danger.

Because the acts of the Dementia Praecox patient are apt to be of impulsive character and frequently originate in his



own delusions and hallucinations, and because his judgment is so markedly impaired, all sorts of anti-social conduct may be expected from him.

Hoag and Williams<sup>3</sup> present an excellent summary of the main characteristics of Dementia Praecox, as follows:

1. This is a mental disorder in which there is a splitting of the personality—a dissociation.
2. It occurs most often in adolescence and early maturity.
3. There is a definite tendency toward mental deterioration.
4. It may result in actual mental deficiency.
5. There is usually present the shut-in type of personality long before the insanity becomes apparent.
6. Mannerisms are common.
7. There may be exalted or depressed phases.
8. Emotional indifference is usual.
9. Negativism may be present.
10. Inability to put thoughts in useful action is characteristic.
11. Catatonic poses are often present.
12. Many cases are found among tramps, prostitutes, criminals, and unadaptable people in general.

Sands and Blanchard<sup>4</sup> present a case of Dementia Praecox, with paranoid manifestations.

“A man (39 years of age) was brought from the police precinct by an ambulance, the arresting officer stating that this man had struck an innocent man in Wall Street. That the prisoner had never seen this man before, and that he could not give any adequate explanation for his act. He was brought before a magistrate, but there he acted so peculiarly that the magistrate had him sent to the hospital for observation.

“At the hospital, the patient showed a very well-developed, well-preserved physical condition. He showed no evidences of any diseases of the central nervous system. He said that for

<sup>3</sup> Hoag, E. B. and Williams, E. H.: *Crime, Abnormal Minds and the Law*.

<sup>4</sup> Sands, I. J., and Blanchard, Phyllis: *Abnormal Behavior*.

the last eight or nine years people had been watching him; they were following him wherever he went. He could hear them talking about him and making disparaging remarks concerning his character. He could not keep any position because people would tell his employers that he was an 'indecent individual.' He finally secured a position in Wall Street taking care of a building (janitor), but here, too, he was being followed by people who prevented him from doing his work properly. He went out of the building and heard a man calling him names. A voice within him immediately told him to attack that man, and this he did for his own defense. He showed a very impulsive, irritable attitude and manner, expressed ideas of persecution, and reacted actively to hallucinatory experiences. He was committed to a state hospital, diagnosed as *Dementia Praecox, Paranoid Form.*"

2. *Paranoia.* This is an extremely rare but very serious disease. Characteristic of it are fixed suspicions, persecutory delusions, dominant ideas or grandiose trends logically elaborated. The patient develops a markedly elaborate system of delusions, often very logical except for the initial premise. Powers of perception are retained and thought appears clear. The disorder rests upon some confusion of the emotional life. Such patients are often liable to commit sex offenses, assaults and homicides and are much given to litigation. A woman paranoiac may imagine herself to be the bride of heaven, a man may claim to be Jesus Christ. The paranoiac is often particularly dangerous because of the difficulty of detecting his disease. He may be able to perform all the ordinary affairs of life in a rational manner while nursing a conviction that he is being maliciously persecuted. The danger mark is sometimes considered to be especially at that point when hallucinations make their appearance, particularly as voices bidding the patient commit some deed of violence, such as the assassination of a ruler. Their delusions of persecution often lead to crimes of violence to retaliate for imagined wrongs.

3. *The Manic-Depressive Psychoses.* There are three



phases of the manic-depressive psychoses, the Manic Phase, the Depressed Phase and the Mixed Phase. The patient may oscillate through all phases or he may be particularly inclined toward one phase. The various types constitute about ten to eleven per cent of the inmates of the state hospitals. The duration of the disease is anywhere from a few hours to several years, while four to eight months is a common duration of the attack. The disease is marked by emotional oscillations and a tendency to recurrence of attacks. In the Manic Phase the patient shows elation, flight of ideas and marked motor activity. Ideas come so rapidly that there is no time to select the proper reaction and judgment accordingly appears impaired. Lack of control of instinctive trends results frequently in sexual misdemeanors, assaults and minor crimes, such as forgery, fraud, etc., but manics are not often guilty of serious crime. In the Depressed Phase the individual is depressed, ideation retarded and his physical activity is inhibited and slow. Feelings of insufficiency or even ideas of sin are frequently expressed. Suicide is the most serious danger at this time, although the gloomy attitude toward the world may also lead the patient to inflict serious injuries on friends or relatives in the attempt to release them from their troubles. A mother in this condition may murder her children, because the world is such a hard place for them. In the Mixed Phase there is a combination of the symptoms of the other phases and in this condition there is a danger of homicide. Related to the Manic-Depressive Psychoses is the disorder known as Involutional Melancholia, which commonly occurs in middle life and is characterized by worry, agitation, marked ideas of sin, motor overactivity and suicidal attempts. This condition is more common among women.

A case of Manic-Depressive Psychosis, Mixed Phase, is given below.<sup>5</sup>

“A young female (25 years of age) was brought into the psychopathic ward in a state of excitement, after having thrown

<sup>5</sup>*Idem*, pp. 199-200.



two of her nieces out of the window, killing one and seriously injuring the other. . . . While in the dentist's chair she suddenly became ugly, insulted the dentist, and returned to her home appearing quite excited. She could give no account of her actions. She went to the bedroom where the children were playing and threw them out of the window.

"In the observation ward she was very impulsive and excited; spoke incoherently and incessantly; bit one of the nurses; expectorated on anyone coming near her; tore her linen and bit her own fingers. She would cry a good deal and appeared to be very depressed. She was finally committed to a state hospital where for a period of four months she was very excited, assaultive, had to be placed in restraint, and was kept in the ward for the violent patients. At the end of that time she gradually became quieter; gained insight into her condition; spoke relevantly and gained considerable weight. She discussed her difficulties very freely, and apparently made a complete recovery from her psychosis at the end of ten months."

4. *Alcoholic Psychoses.* Patients suffering from alcoholic psychoses frequently show delusions, especially of a sexual nature. Very horrible and brutal acts of violence are characteristic of delirium tremens. Dipsomania is called a form of Manic-Depressive Psychosis. There is a mental deterioration, blunting of the "moral sense," great irritability between debauches, increased suggestibility, and delusions of infidelity which sometimes lead to frightful murders. The most serious type of reaction following the indulgence in alcohol is that commonly known as Korsakow's Psychosis. In this there is serious and permanent injury to the nerve cells and the patient is completely disoriented as to person, time and place.

5. *Paresis.* There are a number of mental disorders caused by syphilitic infection, all of which we now know to be preventable as soon as reason instead of morality is applied to the

treatment and prevention of syphilis. General Paralysis of the Insane, or Paresis, is the most serious disorder for the criminologist. The symptoms are both physical and mental. There is marked failure of memory, poor retention, impaired judgment and a failure on the part of the patient to curb his primitive tendencies. Grandiose delusions are common but there is also a group of cases of silly, demented form of expression. The course of the disease is chronic and the average parietic hardly lives more than five years after the onset of distressing symptoms. However, the disease is characterized by remissions so that an occasional parietic is allowed to return temporarily to society.

“A man (45 years of age) was brought to the hospital by a worker attached to the Domestic Relations Court. The history stated that for the past six months the patient refused to support his wife, spent his money lavishly, entered into relations with women of the streets, and struck his children without apparent cause. On examination the patient showed definite signs pointing to syphilitic destruction of the brain. He was unsteady on his feet; his speech was definitely slurring and he omitted many syllables. His knee jerks were markedly accentuated, his pupils were unequal, irregular in outline and reacted very sluggishly; he was partly deaf in one ear. His blood Wassermann and spinal fluid Wassermann were strongly positive, so were the other tests of the spinal fluid. Mentally he was very elated, said that he was the strongest man in New York City, that he owned all the gold mines in the world and that all the girls were in love with him. He stated that his wife was too old-fashioned and he decided to take a girl from one of the New York musical comedy shows. He admitted having spent all the money that he had saved, but said all the banks of New York were his and therefore he could spend as much as he desired. His wife, he said, was not worthy of him and naturally he struck her when she interfered with him. He admitted having contracted syphilis 20 years ago. He was



committed to a state hospital, diagnosed as a case of General Paralysis of the Insane.”<sup>6</sup>

### III. BORDER-LINE MENTAL DISORDERS

These cases form the bulk of medico-legal contentions as to whether the offender may be held responsible for his anti-social conduct. Legal responsibility of such offenders is often denied from a medical viewpoint while the law continues to exact the full payment of the penalty for their acts.

There are three groups constituting borderline mental states. These are borderline mental deficiency, psychoneuroses and constitutional psychopathic inferiority. Borderline mental defect has no particular characteristic distinct from mental defect as studied in the preceding chapter. It is simply a quantitative indication of a position between the genuinely defective and those of normal intelligence.

Constitutional psychopathic inferiority is a general term applied to those who, while manifesting no definite major psychosis habitually react to the requirements of life and society in ways which result in a greater or less degree of maladjustment. The volitional and emotional life, rather than the ideational, seems most affected. The constitutional inferior may be of high or low intelligence, although frequently intelligence and training may be of high order. Often he is physically attractive and thus all the more able to carry through successfully his anti-social desires. Constitutional inferiors tend to become involved in sexual offenses and perversions and are particularly liable to form habits of drinking or drug-taking. They become involved in all degrees of illegal acts and many of them are pathological liars. Many professional criminals in this group, according to Glueck, show pronounced emotional unresponsiveness, cruelty, selfishness and poor judgment. They

<sup>6</sup> *Idem.*, pp. 216-217.



commit larceny, robbery, forgery and sometimes assaults and are frequently characterized by a quarrelsome personality which may lead them into conflicts with the law.

The psychoneuroses are described as certain types of abnormal behavior in which the personality of the individual is retained. Hysteria is the most common and perhaps the most interesting of this group. The personality of the hystericals is marked by undue craving for sympathy and attention, selfishness and disregard for others, and a tendency to take whatever path seems to promise them pleasure. Freud traces the hysterical symptoms to mental traumata which the patient cannot consciously recall, most of these being sexual in nature and originating in infancy. The emotional tone, it is held, could not be given free play because of its painfulness and hence it was repressed. By bringing into consciousness the trauma and the painful emotion associated with it the strangled emotion is supposed to be liberated and the patient cured. It would appear that hysterical manifestations have a multiplicity of origins. Symptoms involve paralyses, difficulties in swallowing, twitching and even convulsive phenomena. Many neurologists maintain that suggestion is the basis of the disorder and that all the symptoms of which the patient complains have been suggested to them by others. Victims of accidents sometimes develop a variety of bodily disorders which disappear after compensation has been secured, such manifestations being obviously of hysterical origin. Because of the dominance of the hysterical by a set of ideas which have been formed into a system there is a certain danger that the patient may translate his fantasies into overt acts of anti-social nature.

Compulsion neurosis, or psychasthenia, is characterized by peculiar fears and fixed ideas. Persons so afflicted may perform all sorts of impulsive acts. Under the actual neuroses we find neurasthenia and anxiety neurosis, and patients of this kind are frequently abnormally irritable, impulsive and unable to control their desires.

## IV. EPILEPSY IN RELATION TO CRIME

Epilepsy was early recognized as a cause of crime. As such it was given consideration in the old Roman Laws.<sup>7</sup> From his early studies Lombroso was convinced that most criminals were epileptic to an extent but more recent investigators hold that he greatly overestimated the incidence of epilepsy among criminals. However, epilepsy is still recognized as one of the important factors to be taken into account in any study of crime and criminals.

Characteristic of the epileptic temperament are violent temper, sullenness, cruelty, sexual abnormalities and perversions, impulsiveness, irritability, and inconsistency. Epilepsy may give rise to obvious convulsions with unconsciousness, loss of consciousness without convulsions, dream states and momentary periods of confusion. Dostoevsky's *The Idiot*, based in part upon observations on himself, presents a classic picture of an epileptic.

When epilepsy is coupled with insanity the resultant epileptic furor leads at times to the most revolting crimes imaginable. Among the most common crimes of epileptics are murder, sex offenses, rape and various forms of perversion, arson and bigamy.<sup>8</sup>

Concluding their chapter on the epileptic criminal Hoag and Williams declare:<sup>9</sup>

"Epilepsy is one of the most terrible of all mental afflictions. While it is true that many cases are mild and may often, under modern treatment, be kept under almost perfect control, yet potentially, at least, there are always grave dangers. No other mental disorder shows such a variety of manifestations, and no other is likely to result in such serious criminal complications. All very unusual and all particularly extraordinary cases should be thoroughly investigated for the possible

<sup>7</sup> Hoag and Williams, *op. cit.*, p. 112.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, p. 113.



presence of this malady, a point which, in our courts, seems to be rarely recognized or given any consideration."

## V. THE CRIMINAL'S LACK OF INTEGRATION

Whatever else may or may not be wrong with the criminal psychologically we are beginning to see him primarily as a case of a poorly integrated personality. By this we mean that there are marked and serious disparities between his intellectual, emotional or volitional life and the requirements of the group. A person is integrated, whatever may be his mental or social level, if there is harmony between his impulses and his opportunities, and his personality tends toward disintegration when there are marked trends pulling him in different directions.

Burnham has given an excellent statement of the meaning of integration:

"The process of education for all of us is first to build up this self and to acquire experiences that will serve as corrections in new situations; and as shown by innumerable pathological and semi-pathological cases, whenever there is dissociation to such an extent that the present experience lacks correction from the association complexes of the past experience, any kind of erratic thinking and behavior is liable to occur.

"We realize instinctively that our self-hood, our personality, is the citadel of health and sanity. We feel bound to protect our own personality at all hazards and we resent above all else anything which tends to disintegrate this.

". . . If we turn to abnormal psychology, there is a great literature on mental conflicts, on unwholesome mental complexes, repressed ideas, repressed feelings, psychic lesions and the like. All these are illustrations of various forms and conditions of disintegration of the personality, and indirectly illustrate the need of that unity and coordination of the mental and physical abilities that we have called integration. . . .

"The evidence from psychology, normal and abnormal, points to integration as the essential characteristic of the nor-



mal mind. We may then probably describe the normal mind as one in which the manifold impulses and mental processes are integrated for general purposive activity.”<sup>10</sup>

## VI. THE CRIMINAL A SOCIAL FAILURE

As Groves has put it; the criminal represents a failure on the part of society. His personality, badly integrated as it is, becomes more inefficient as his condition of maladjustment continues through the years. Every act of anti-social nature, practically if not absolutely every punishment for such acts, represents a further step in social maladjustment, from which it becomes more and more difficult to rescue the criminal.

“We are forced,” Groves declares<sup>11</sup> “to explain criminal conduct as we explain any other conduct. The criminal personality is a product of heredity and social influences just as any other human being is. . . . No individual succeeds perfectly in meeting his trials. The criminal fails most seriously either because of inherent weakness or conditions that have been brought about by his social development. Society cannot tolerate certain forms of bad adjustment and it is these that the law bans, and the doing of which constitutes crime. . . . Crime . . . represents a perversion of human impulses, most of which when properly socialized are an asset to society. . . . The criminal, then, is chiefly a product that results when our socializing processes fail either because of faults in the raw human nature presented or because of the treatment given. . . . Society in its task of preventing crime must largely salvage the potential criminal by turning his impulses, when first they show a tendency toward unsocial conduct, into safe and even useful expression.”

<sup>10</sup> Burnham, Wm. H.: *The Normal Mind*, pp. 35-37.

<sup>11</sup> Groves, E. R.: *Social Problems and Education*, 1925, pp. 39, 70-71.

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## VIII

# THE CLINICAL APPROACH TO THE STUDY OF THE CRIMINAL

### I. NATURE OF THE CLINICAL APPROACH

THE claims of Lombroso fixed the attention of modern criminologists upon the offender. In like manner the sweeping claims of Goddard tended to fix the attention of an increasing number of investigators upon the mental condition of the criminal. The gradual development of the modern mental clinic from the early efforts to discover intelligence levels has shown that feeble-mindedness is only one of a group of defects or deviations from normal mental condition, and that all such deviations incapacitate the individual to a greater or less extent for participation in human affairs.

The following results of clinical studies give some idea of the extent to which typical groups of offenders deviate from a normal mental condition. Just how far their delinquency is the result of their abnormal mental state we may never be able to determine. There are so many other factors which enter into the production of crime. It is evident to the candid observer, however, that we have here come upon one of the most important factors, if not the most important, in the crime problem. It is becoming increasingly evident that a majority of those persons whose lives are apparently abandoned to a career of crime are characterized by some deviation from a normal mental condition. This fact can no longer be ignored, either in our efforts to correct offenders or to protect society.



## II. THE DEVELOPMENT OF CLINICAL STUDY

As we have seen, the earlier statistics regarding the mental condition of offenders were almost entirely secured by mental tests. Very little effort was made to inquire into the heredity, life, or social history of the subject in connection with the examination of his intelligence. Neither did these studies include a careful examination for abnormal mental states other than feeble-mindedness. The full significance of abnormal mentality as a factor in crime was not appreciated until social case work methods were applied to the treatment of juveniles. Much depended upon the development of improved methods of psychoanalysis also. The significance of many forms of behavior as symptoms of mental states had to pass from the popular notion of "cantankerousness" and "pernickertyness" to their true relation to mental pathology before their relation to delinquency could be understood.

We shall not undertake a survey of the entire field of clinical study. A few well known illustrations will suffice for our purposes. Illustrative material, however, is abundant.<sup>1</sup>

## III. THE STUDIES OF DR. HEALY AND OTHERS

Among the early clinics was that established in connection with the children's court in Chicago under the direction of Dr. William Healy. This clinic was organized for the purpose of studying youthful offenders who came a second time into the court. It was felt that a careful effort should be made to learn why these cases had not responded satisfactorily to their first treatment, and to discover whether some new cause of delinquency had developed.

Dr. Healy was assisted by an able staff of social workers and efforts were made to learn the individual's physical, medical and social or life history as well as his mental condition. To

<sup>1</sup> In addition to marginal references the reader is referred to the bibliography at the end of this chapter.

this life record was added in each case the account of the treatment accorded to each individual and the nature of his response, as long as the court was able to keep in touch with him.

After a thousand of these youthful repeaters had been studied, the results were published in a candid and enlightening volume which immediately became a source book for all students of juvenile delinquency.<sup>2</sup> We are concerned here only with the findings relative to mentality. It should be borne in mind that these cases were all juveniles and second offenders.

This study indicated that about 10 per cent were feeble-minded, 8 per cent subnormal, about 7 per cent suffered from psychosis, and 7 per cent were epileptic.<sup>3</sup> The group also included 81 cases of mental conflict which were made the basis of a separate report, which represented one of the first efforts to acquaint the public with the use of psycho-analytical methods in the treatment of delinquency.<sup>4</sup>

These careful studies indicated that in a thousand cases of juvenile repeaters who by reason of their second offense were perilously near the threshold of criminal careers, at least a third deviated in some respect from a normal mental condition.

E. H. Williams made a study of 215 boys in the Whittier State School in California. He found 32 per cent feeble-minded and 21 per cent on the borderline, making a total of 53 per cent subnormal. This group is still more selected than those studied by Healy, since their delinquencies were so serious as to require commitment to a training school. This study does not report on mental condition other than subnormality.<sup>5</sup>

Hoag and Williams report on a study of 100 delinquent cases in the Honolulu Juvenile Court in which only one was above normal, six were fairly normal and six were dull normal; twenty were dull, twenty were borderline cases and fifty-five were

<sup>2</sup> W. Healy, *The Individual Delinquent*, 1915.

<sup>3</sup> *Ibid.*, pp. 130 ff.

<sup>4</sup> W. Healy, *Mental Conflicts and Misconduct*.

<sup>5</sup> E. H. Williams, "Intelligence and Delinquency," *Jour. Crim. Law*, Jan. 1916, pp. 696-705.



feeble-minded. Accordingly 67 per cent were subnormal to some extent; 49 per cent of the boys were feeble-minded, and 67 per cent of the girls. In the cases in which accurate information was obtainable, 79 per cent were retarded from one to five years in school.<sup>6</sup> Here again no account was taken of psychopathic cases.

As we turn from these to studies of adults we get corresponding results. Of one hundred incorrigible, habitual offenders in the Indiana State Prison studied by Bowers, 23 were feeble-minded, 12 were insane, 38 were constitutionally inferior, 17 were psychopaths, and 10 were epileptics.<sup>7</sup> In this case of a highly selected group of adults we have 100 per cent mentally abnormal.

Out of 400 women studied by Spaulding in the Massachusetts Reformatory for Women at South Framingham, 26.8 per cent showed mental subnormality. Epilepsy, hysteria, insanity, and psychosis brought the total of mentally abnormal cases to 37.2 per cent of the whole number studied.<sup>8</sup>

Another study in Massachusetts, made by Rossy, of 300 criminals in the state prison, using the revised Yerkes-Bridges point scale, revealed 22 per cent feeble-minded, 9.6 per cent borderline cases, and 3.3 per cent psychotics, making a total of 35 per cent mentally abnormal.<sup>9</sup>

#### IV. GLUECK'S STUDY AT SING SING

Fortunately some relatively recent studies have thrown considerably more light upon this subject. One of the earliest and most extensive of these was undertaken at Sing Sing prison in New York.

In the summer of 1916, under the direction of Warden Osborne, a clinic was established in the prison for the purpose of

<sup>6</sup> *Crime, Abnormal Minds and the Law*, p. 140.

<sup>7</sup> P. E. Bowers, "The Recidivist," *Jour. Crim. Law*, Sept. 1914.

<sup>8</sup> E. R. Spaulding, *Jour. Crim. Law*, Jan. 1915, pp. 704-717.

<sup>9</sup> C. S. Rossy, *Report etc.*, Mass. State Board of Insanity, Bulletin 17, Jan. 1916.



detecting and removing the highly defective convicts who were an impediment in the way of the success of the Mutual Welfare League. We quote the following paragraphs from an interview given to the *New York Times* by Dr. Thomas W. Salmon, formerly Medical Director of the National Committee for Mental Hygiene, retired surgeon of the United States Navy, who prepared the plans for the investigation and outlined the essentials of the scheme:

"The establishment of a psychopathic clinic in Sing Sing Prison marks a most important advance in the scientific study of crime. It has long been apparent that problems of prison reform, and of reconstructing the individual prisoner, were strongly influenced by certain mental factors. The first step was the detection of the feeble-minded among prisoners and delinquents. This proved to be the only starting point for study of disorders of conduct and there has been a deep conviction among specialists in mental medicine that light could be thrown upon more obscure problems if a psychopathic clinic was set up within the walls of the prison.

"Dr. Bernard Glueck is in charge of the Government Hospital for the Insane at Washington and is a psychiatrist of international reputation. He has made a study of the mental factors in crime and delinquency, he will devote his whole time to the work and will have able assistants. . . .

"The establishment of the psychiatric clinic is the first step toward an efficient medical service which will insure careful examination and treatment of every prisoner, and it is hoped that Sing Sing may become the reception prison through which all admissions will be passed. In this way it will be possible to correct many correctible defects and greatly to improve the mental and physical standard among prisoners, at the same time supplying the other prisons with a stream of sane, sound men."<sup>10</sup>

<sup>10</sup> For complete article see *New York Times*, July 16, 1916; also Corinne Bacon, *Prison Reform*, pp. 162-164. Miss Bacon's claim for this as the first Clinic for crime is not entirely accurate. A similar study was un-

By the adoption of this plan it was hoped to weed out the feeble-minded, the ill and the degenerate from the normal prisoners and send them where treatment was possible. It was the plan of the specialists who took up the work to examine a year's admissions at the prison. It was intended to include in the examination the family history of each prisoner, his early development and later life history, his mental status, his attitude and conduct in prison, and reaction to confinement. A thorough physical examination was also planned.

The first annual report of the psychiatric clinic covered those cases studied in the first nine months of its work, or to April 30, 1917. Out of 683 prisoners admitted to Sing Sing during the nine months, 608 were studied carefully by the clinic. The report draws attention to the following facts:

1. Of 608 adult prisoners studied by psychiatric methods out of an uninterrupted series of 683 cases admitted to Sing Sing Prison within a period of nine months, 66.8 per cent were not merely prisoners, but individuals who had shown throughout life a tendency to behave at variance with the behavior of the average normal person, and this deviation from normal behavior had repeatedly manifested itself in a criminal act.

2. Of the same series of 608 cases, 59 per cent were classifiable in terms of deviations from average normal mental health.

3. Of the same series of cases, 28.1 per cent possessed a degree of intelligence equivalent to that of the average American child of twelve years or under; of the 98 native born defectives, 80.6 per cent were recidivists in crime, whose average number of sentences to penal or reformatory institutions was 3.5; and 85 per cent of the group will have been returned again into the general community within a period of five years.

4. Of the 608 cases, 18.9 per cent were constitutionally inferior, or psychopathic, to so pronounced a degree as to have rendered extremely difficult, if not possible, adaptation to the ordinary requirements of life in modern society. This lack of

dertaken in Joliet, Ill., previously. See *Institution Quarterly* (Illinois), Sept. 30, 1915.



capacity for readjustment is reflected, on the one hand, in the fact that of the 91 native born in this group 86.7 per cent were recidivists in crime, whose average number of sentences to penal or reformatory institutions was 3.9, and, on the other hand, in the fact that a very significant number of them had been totally economic failures thus far. Furthermore, 82.4 per cent of these cases will have been discharged again into the general community within a period of five years.

5. Of the 608 cases, 12 per cent were found to be suffering from distinct mental diseases or deteriorations, in a considerable number of whom the mental disease was directly or indirectly responsible for the anti-social activities.<sup>11</sup>

In considering the figures cited above, it must be borne in mind that the group studied consisted of felons, i. e., individuals convicted of crimes serious enough in their nature to warrant their being sent to state prison. We shall have occasion to return to a study of this report in another connection.

#### V. STUDY AT PORTSMOUTH NAVAL PRISON

During the World War, Warden Osborne was placed in charge of the Naval Prison at Portsmouth, New Hampshire. The following material is from the report of Dr. A. L. Jacoby, who made a psychiatric study of 150 prisoners.

Psychiatric examinations of naval prisoners were instituted about Nov. 1, 1917, and the work had been undertaken, from the investigator's standpoint, as an attempt to determine, first, the incidence of nervous or mental disorder in general court-martial prisoners, and, secondly, to reach, if possible, a method of reducing the economic loss occasioned by military delinquency. The methods employed in the examination of the 150 cases here cited have been as thorough and complete as possible, without too great interference with the routine of the prisoners. A

<sup>11</sup> B. Glueck, "A Study of 608 Admissions to Sing Sing Prison," *Mental Hygiene*, January 1918.



careful family and previous history was taken from the prisoner himself, and, where possible, corroboration of the facts given was obtained by correspondence with institutions where the man had previously been confined. Terman's revision of the Binet-Simon tests was used for the psychological examining.

Each case was examined neurologically as well as psychologically, and, in many doubtful cases, a period of observation in the naval hospital was used in making a diagnosis. Special examinations, cerebro-spinal fluid, eye-grounds, Wasserman, X-ray, etc., were used whenever their need was indicated. The possibility of malingering is always to be borne in mind when dealing with the psychiatric problems of prisoners, and it is thought that these rather thorough methods served practically to eliminate that factor.

In this series three appeared on their own initiative, seventy-five were referred for examination by some official of the prison, usually one of the physicians who make the routine physical examinations upon admission; the remaining seventy-two cases were not referred, but taken in routine as they were admitted. Following are the results of the diagnosis:

Subnormal, 26.6 per cent; hysteria, 12.0 per cent; dementia praecox, 2.0 per cent; chronic alcoholism, 4.0 per cent; cerebro-spinal syphilis, 2.0 per cent; psychopathic personality, 5.3 per cent; constitutional inferiority, 6.0 per cent; other forms of deviation from normal mentality, 12.0 per cent; total abnormal mental condition 67.7 per cent.<sup>12</sup>

The proportion of nervous or mental disorders is thus seen to be two-thirds of the total examined. Even in this relatively small series of cases, the proportion of the abnormal coincides closely with King's observations. He found in one thousand prisoners that 65.4 per cent fell into abnormal groups.<sup>13</sup>

<sup>12</sup> A. A. Jacoby, *Psychiatric Material in the Naval Prison at Portsmouth*, U. S. Nav. Med. Bul. Vol. 12, No. 3.

<sup>13</sup> E. King, "The Military Delinquent," *Mil. Surg.* 37, Dec. 1915, pp. 574-578.

## VI. NEW YORK STATE INVESTIGATION

At a meeting of the New York State Commission of Prisons, held June 4, 1918, a resolution was adopted directing that an investigation be made on the subject of mental disease and delinquency, by a committee of the commission. A report of the investigation thus authorized was prepared with the assistance of Dr. V. V. Anderson, Psychiatrist in charge of special work in Mental Deficiency with the National Committee for Mental Hygiene. The following data is taken from this report.<sup>14</sup>

*Percentage of inmates of certain New York Penal Institutions exhibiting nervous or mental abnormalities.*

Institution	Authority	Percentage
Sing Sing Prison,	Dr. Bernard Glueck	59.0
Auburn Prison,	Dr. Frank L. Heacox	61.7
Clinton Prison,	Dr. V. V. Anderson	60.0
Auburn Prison, (Women)	Mabel R. Fernald, Ph.D.	31.9 *
Westchester Co. Peniten.,	Dr. Frank L. Christian	
N. Y. State Reformatory,	Dr. John R. Harding	58.0
N. Y. State Reformatory for Women,	Mable R. Fernald, Ph.D.	25.0 *

\* Feeble-minded only.

The same report included results of studies made in surrounding states. The following table is made up of these.

*Inmates of Reformatories and Houses of Correction Exhibiting nervous and mental abnormalities.*

Institution	Authority	Number studied	Percentage
N. Y. State Reformatory, Elmira.	Dr. F. L. Christian		
	Dr. J. R. Harding	400	58.0
Mass. State Reformatory, (for men)	Dr. G. G. Fernald	1,376	59.0
Mass. State Reformatory, (for women)	Dr. E. R. Spaulding	500	63.0
House of Correction of Holmsburg, Penn.	Dr. L. S. Bryant	100	69.0

<sup>14</sup> *Mental Disease and Delinquency*, Nat. Com. for Ment. Hyg. Reprint No. 50.

Western House of Refuge for Women, Albion, N. Y.	Dr. J. L. Herrick	185	82.1
Westchester County Peni- tentiary, N. Y.	Dr. B. Glueck	225	57.0
Mass. Reformatory for Women,	Jesse D. Hodder	5,310	72.2 *

\* Women criminals in Mass. either on probation or sentenced to institutions in 1915.

## VII. STUDIES IN BOSTON MUNICIPAL COURT

A study of 1000 offenders by the Medical Service of the Municipal Court of Boston showed 23 per cent feeble-minded, 10.4 per cent psychopathic personality, 3 per cent epileptic, and 9 per cent mentally diseased. Of these 1000 cases, 456 exhibited abnormal nervous and mental conditions. Every one of these 456 persons is reported as a potential candidate for ultimate custodial treatment.<sup>15</sup>

One hundred defective delinquents were carefully examined. The court records showed that they had been arrested 1825 times within a period of five years. Records older than five years were not gone into. Judges had tried everything in the way of routine correctional methods. They had been placed on probation 432 times and did not average one successful probational period apiece. In fact, the chances were better than four to one against any one member of this group being able to complete his probation successfully. They were given 735 sentences, aggregating in fixed time 106 years of imprisonment, exclusive of 250 indeterminate sentences to reformatories. Further, it was found that 75 per cent of these persons had never during their lives been legitimately self-supporting and that none of them possessed intelligence above that of an average American child of 11 years of age. In fact, 75 per cent had the mental level of children under 10 years.<sup>16</sup>

The report of the New York State Commission previously

<sup>15</sup> *Mental Clinics in the Court*, Report Nat. Com. Ment. Hygiene, 1922.

<sup>16</sup> *Ibid.*



quoted carried the results of a study of selected cases in the Boston Municipal Court as follows: <sup>17</sup>

*Relationship of mental defect and disease to selected types of problem cases in court.*

Diagnosis	100 Drug users	100 Immoral women	100 Shop- lifters	100 Drunken women	100 Vagrants
Normal	18	20	22	11	2
Dull normal	20	32	12	21	8
.....					
Feeble-minded	28	30	25	32	36
Epileptic	4	6	10	8	2
Alcoholic deterioration	—	2	—	7	12
Drug deterioration	14	2	—	—	4
Psychopaths	14	7	23	10	8
Psychosis	2	1	8	11	28
Total abnormal	62	48	66	68	90

VIII. THE CINCINNATI SURVEY

At the request of the Public Health Federation and in co-operation with the public schools, the Vocation Bureau, the social agencies, the City Department of Health, and other bodies, the National Committee for Mental Hygiene, early in the year 1921, conducted a very exhaustive study of Cincinnati's social problems. Briefly, the findings were as follows:

Three out of every four adults dependent upon society for their support are not in normal mental health, but are suffering from abnormal mental and nervous conditions which, it is believed, have everything to do with their dependency; 25 per cent of them are actually mentally diseased.

Seventy-five per cent of the jail inmates are psychiatric problems. Two out of every three children who come before the juvenile court are mentally abnormal (psychopathic, epileptic, feeble-minded, mentally diseased, or subnormal in intelligence).

Thirteen out of every 100 children in the schools deviate from normal mental health. Of these 2 per cent are feeble-minded; 4.8 per cent are subnormal; 2 per cent are cases of

<sup>17</sup> V. V. Anderson, *Mental Disease and Delinquency*, Mental Hygiene Reprint No. 50.

borderline mental defect; 3.5 per cent are psychopathic; two-tenths of one per cent are epileptic; and seven-tenths of one per cent are suffering from endocrine disturbance.<sup>18</sup>

#### IX. STUDIES IN RECORDER'S COURT, DETROIT

In the Psychopathic Clinic of the Recorder's Court of Detroit, 1333 individuals were carefully studied in 1922. These were studied exactly as a physician studies his cases, and records were made of each one, comparable in every way to the hospital case records. Ninety-eight, or 7 per cent of this number were found to be suffering from actual insanity. The intelligence of 27 per cent was below that of a normal child of 12 years. There was evidence of disorder of the nervous system but not of the type to be classified as insane in 30 per cent. There were 126 inebriates or drug addicts, a proportion of 9 per cent.

Each one of these cases was referred to the clinic for examination by some judge or other court official for an opinion as to what was needed in the particular case to insure the social behavior of that individual in the future. The charges upon which these 1333 individuals were being held included nearly the whole legal category of crime, the offenses ranging in severity from speeding to murder. More than half of them had been previously before a criminal court, many of them several times, and a few more than fifty times.<sup>19</sup>

#### X. STATISTICS FROM THE WOMEN'S DAY COURT, NEW YORK

In the Fall of 1920 the New York Probation and Protective Association, an organization that is interested in the welfare of the girls and young men of New York, offered the part-time

<sup>18</sup> V. V. Anderson, *A Five-Year Mental Hygiene Program for Cincinnati*, Nat. Com. for Ment. Hygiene, 1923.

<sup>19</sup> A. L. Jacoby, "Crime as a Medical Problem," *The Nation's Health*, August 1924.

services of a psychiatrist to the Women's Day Court. It was not the purpose of the organization to undertake a survey or to carry out a statistical investigation. The idea was simply to gain an impression of the psychiatric material that presented itself in the court cases, to see whether a psychiatrist could be of service in helping the court and in aiding the probation officers in the handling of special problem cases. It was also the hope of the organization that the examiner would be able to help the individual girls to arrive at a better understanding of themselves and their difficulties. The work was begun on October 17, 1920, and was carried on until August 15, 1921; during these ten months 300 women were examined.

It was not possible to give all the women intelligence tests. A few refused to cooperate, some did not speak English sufficiently well, others were hurried away before the examination was completed, and there were a number of women suffering from mental diseases for whom such a test would have had little value. Two hundred and seventy-six of the women, however, were tested by the Stanford revision. The following table gives the results:

Charge	Total	Normal	Dull normal	Border- line	Defective
		%	%	%	%
Incorrigible	107	15.0	27.0	30.8	27.1
Prostitution	149	18.8	24.8	30.9	25.5
Other charges	20	20.0	20.0	40.0	20.0
Total	276	17.4	25.4	31.5	25.7

For the whole group examined, the normal and dull normal constituted 42.8 per cent, while the borderline and defective together were 57.2 per cent; for the incorrigible group the corresponding percentages were 42.1 and 57.9; for the prostitution cases, 43.6 and 54.4. This table shows that 17.4 per cent of the 276 cases tested had normal intelligence, which is expressed by an intelligence quotient of 90 or above. This means that they passed successfully the tests required of a normal child of the age of 14 years and 5 months.



The next group, the dull normals, make up 25.4 per cent of the cases. These individuals with an intelligence quotient of 80-90 correspond in mental capacity to children of the age of 12 years and 10 months to 14 years and 5 months.

The so-called borderline cases, 31.5 per cent of the series, have the mentality of children of the age of 11 years and 4 months to 12 years and 10 months.

Those termed mental defectives have an intelligence quotient of below 70,—that is, they can compete mentally only with children of the age of 11 years and 4 months.

Over one-half the cases, 57.2 per cent, therefore, are defective or subnormal in intelligence. Five of the 71 defectives had actually been in institutions for the feeble-minded.

The examiner went over 300 cases with a view to grouping them according to mental defect, personality deviation, and mental disease. The results are shown by the following table:

Normal type, .....	33
Inferior or psychopathic personality, .....	129
Borderline intelligence, .....	52
Mental defectives, .....	71
Insane, .....	14
Drug addict, .....	1
<hr/>	
Total .....	300

Of this group of 300 women, therefore, only 33, or a little over 10 per cent were in a normal mental condition.<sup>20</sup>

XI. RELATION OF ABNORMAL MENTALITY TO CRIME

No one can look over this material without being impressed with the importance of mental abnormality as a factor in crime. It is not necessary to assert that deviation from normal mental condition is the cause of crime. There is rarely any single cause of criminality. Certain deductions may be made legitimately, however, from the foregoing data. As the methods

<sup>20</sup> Augusta Scott, National Committee for Mental Hygiene, Reprint No. 146.

of making clinical studies have improved and greater precautions have been taken to bring all of the factors into consideration, it has become increasingly apparent that a majority of typical criminal groups either have not the intelligence to manage their own affairs with prudence, or their mental pathology has made it practically impossible for them to adapt themselves to the requirements of normal social life.

While many of these unfortunate find themselves in social situations where their handicaps are only one among many factors making for anti-social conduct, perhaps as many are so afflicted as to be unable to escape coming in conflict with society even in the best of surroundings.

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PART II

CRIME





## IX

### THE NATURE OF CRIME

#### I. THE NATURE OF CRIME

WHAT is the nature of the conduct which brands the doer as a criminal? This has been one of the most perplexing questions confronting organized society. In spite of the fact that this question has been with us since earliest human associations, and in spite of the fact that crime now constitutes one of the chief problems of civilization, our thinking has never been quite clear on this point. The reason for this confusion is in the nature of the phenomenon itself.

Most of us have a working notion that there is a definite body of behavior which is criminal in the very nature of things. This serves us very well until we try to come to close quarters with it. When we do, it has a way of becoming chimerical and we have difficulty in laying our hands upon anything real.

What, then, is this thing we glibly call crime? Is there any act or group of acts which constitute it which are criminal always and everywhere? Contrary to popular and widespread notions, there is no such act or body of acts.

#### II. THE CONCEPT OF A NATURAL CRIME

In his approach to the study of Criminology, Garofalo made an elaborate study to determine whether there is what might be called a "natural crime," that is, an act or a group of acts which has been considered criminal by all men everywhere. "The sole point of inquiry is whether, among the crimes and offenses recognized by existing laws, there are any which at all

times and in all places had been recognized as punishable acts. When we think of certain hideous crimes such as parricide, assassination, murder for the sake of robbery, murder from sheer brutality, . . . the question would seem to require an affirmative answer. But a slight investigation seems to dispel this idea.”<sup>1</sup> After a careful analysis of society’s concept of crime, he concludes that, as a basis of all criminal legislation, there is a natural aversion to wanton or socially useless cruelty. As human beings have become more sympathetic, more and more acts have become obnoxious to society and classified as criminal by legislation. Such a natural basis for crime, even if true to facts, would have little value for our discussion. Much primitive criminal legislation, however, arose from other than humane considerations. We would, perhaps, be nearer to the natural crime in acts which are punished by the group in self-defense.

### III. THE CONCEPT OF CRIME NOT STATIC

In spite of the common belief that what is once a crime is always a crime, and that there is a sort of criterion of right and wrong by which all men in all ages are bound, we find that the amount and nature of crime are never stationary. The concept of crime depends, in a large measure, upon the prevailing group interests, and group interests change from time to time with changing social and intellectual conditions. Beccaria called our attention to this many generations ago when he launched his crusade for a saner attitude on the part of society toward criminals and the whole subject of crime. “Whosoever reads with a philosophic eye the history of nations and their laws will generally find that the ideas of virtue and vice, of a good or a bad citizen, change with the revolution of ages.” He continues, “He will frequently observe that the passions and vice of one age are the foundations of the morality of the following; that violent passion, the offspring of fanaticism, and enthusiasm being weakened by time, which reduces all the phe-

<sup>1</sup> R. Garofalo, *Criminology*, p. 5. Mod. Crim. Sci. Series.



nomena of the natural world to an equality, become, by degrees the prudence of the age.”<sup>2</sup>

Crimes change with the changing of customs. Actions which once roused a populace into a frenzy may pass in a subsequent generation without protest. Things held vital by one generation may lose their value or relative importance in the next. In crude frontier communities where the struggle for existence is hard, crime is dealt with by rugged justice. Many western states of the Union have old laws which punish horse-stealing with hanging, but rarely do we hang horse-thieves in these days. In our colonial history, courts solemnly condemned to death persons convicted of witchcraft. A glance at the criminal laws of England will reveal the length to which law has gone in its attempt to make property safe. It was once a crime to buy produce on the way to market, or to purchase with a view to selling at a profit. Today we clamor for relief from powerful corporations which amass wealth from speculation in food supplies.

Legislation is usually the register of the common will. Customs are powerful for a long time before they become law and they exercise a restraining influence on conduct in the form of public opinion. If they are not challenged too rudely, they may continue to serve the ends of society in this form indefinitely. If, however, there is a flagrant violation of customary restraint, the custom registers itself in legislation or court decrees. By this formal recognition of the social body, custom becomes law. However, it is not rendered permanent by this action. For various reasons, public sentiment may change and leave the law without popular support. It then becomes a dead letter, and unless it is repealed for some reason or other, it may remain upon the statute books unused. Most of the older states still have many so-called “blue laws” which survive from a time when a stern theological concept of life laid a heavy hand upon human conduct.

Practically every innovation which has threatened or has

<sup>2</sup> Beccaria, *Essay on Crime*, chap. IV.

seemed to threaten established usages of more or less real importance has been declared to be a crime. Innovations are frequently manifestations of the fact that changes are taking place in the customs which are not yet perceived by the social body. In such cases, either one of two things happens: the power of conservative custom is so strong that the changes are not completed, or the changes are gradually accepted by the group and the prohibitions against them are removed or become obsolete and unenforced. Practically any act may be made right or wrong by the power of custom. On the other hand, many actions which are tolerated or even required are left without foundations when customs change, and the continued practice of them may become criminal. The most notable instances of this are sacred prostitution, public lupinars and the sacrificing of children.<sup>3</sup>

The average individual would be surprised, if he analyzed his conduct, to find the extent to which he follows more or less rigid custom. Many acts of themselves, apparently most trivial, are of social importance because of their customary associations. If these customary associations assume social importance to the extent of being enforced by law, omissions or violations which formerly would have been merely bad manners then become crimes to be punished with severity in proportion to the importance attached to the act by popular opinion or the interests protected.

#### IV. NOTIONS OF CRIME NOT UNIFORM

It is possible and frequently true that an act which constitutes a crime in one social group may be a legitimate and even honorable action in another. The savage kills his enemy with pleasure but is restrained from doing injury to members of his clan. The religious fanatic thinks he is doing God a service by

<sup>3</sup> For full discussion see W. G. Sumner, *Folkways*, chaps. IX, XI, XV. Also Garofalo, *Criminology*, pp. 12, 13. Mod. Crim. Sci. Series.



torturing, maltreating, or even putting to death a member of his own group or household for holding heretical opinions. Some of the darkest chapters in human history have been the result of theological notions which have given rise to conduct contrary to natural social laws.

Curious instances of what appear to us to be absurd criminal laws might be given at tedious length.<sup>4</sup> The Ionians passed a law exiling all men who were never seen to laugh. The Carthaginians killed their generals when they lost a battle. Pliny relates that they condemned Hanno for having tamed a lion, because a man who could tame a lion was dangerous to the liberties of the people. In ancient Rome, play-actors were deprived of citizenship. By the Julian law, celibacy was a crime. In Sparta, confirmed bachelors were stripped in mid-winter and publicly scourged in the market-place.<sup>5</sup> With regard to legislation governing trade and commerce, forestalling, regrating, and engrossing are now almost forgotten crimes. Yet it is little over half a century since the political economists succeeded in wiping them off the English statute-books. To forestall was to buy goods on the way to market with the purpose of enhancing the price or diminishing the supply. To regrade was to buy in the market-place in order to sell again at a higher rate. To engross was to buy grain standing, or generally to buy up sundry kinds of provisions with the intention of selling again. The penalties against these acts were designed to cheapen the cost of living by reducing the number of middle men. In the reign of Edward IV the sale of coin to a foreigner was a felony. Under Lysander, the Lacedaemonians put to death any citizen found to have gold in his possession.

Such illustrations could be multiplied almost indefinitely. Sufficient material has been submitted to make it clear that the concept of crime is variable, and dependent upon time and place.

<sup>4</sup> For extended lists see F. H. Wines, *Punishment and Reformation*, chap. II. Also Garofalo, *op. cit.*

<sup>5</sup> F. H. Wines, *supra*, p. 18.



## V. OTHER FORMS OF ABNORMAL CONDUCT

Crime is only one of several forms of abnormal conduct about which society has built up more or less definite notions. Abnormal conduct may be recognized in two general forms. If it is more individualistic than social it may be either *sin* or *vice*. If it is more social than individualistic it may be *tort* or *crime*. If we make a further subdivision along individual or collective lines, we may say that sin is an individualistic violation of a moral law, while vice is a social manifestation of sin. On the other hand, tort is a violation of individual rights guarded by social regulation, while crime is a violation of law which guards the well-being of the whole social body. It is apparent, therefore, that the various forms of abnormal conduct are closely related to one another and are distinguished from each other at times with difficulty. Advanced societies of men have endeavored to make careful distinctions between them but the problem has been made difficult by the fact that changing public opinion has constantly shifted various acts from one classification to the other. Even today sharp distinctions are essentially arbitrary, and definitions, to be accurate, must be general.

1. *Sin*. In the normal individual personal conduct is determined by regulations reaching much further than those imposed by legal process. The average individual is seldom conscious of legal restraint. Rarely is he unconscious of moral restraints for any considerable length of time. We need not enter into a discussion of the source or sources of moral restraints. Whether the moral obligation is ascribed to divine legislation or has acquired its sacredness and sanction from the force of usage is of little consequence to this discussion. In most advanced societies, the sanction or obedience-compelling power behind moral law is conceived of as being divine. In other words, obedience is required by the divine will. Supplementing the civil law and extending to the most minute detail of conduct,

is moral law which makes itself felt through what is commonly spoken of as the conscience. *The violation of the moral law is sin.* It may or may not be social in its nature. If the act in no way injures or jeopardizes society, there is no element of crime in it. If, on the other hand, the act in any way interferes with society or the fulfilment of the individual's social obligations, then there is an element of crime in it. As this element becomes clearly distinguishable and society recognizes it by legal enactment or judicial decision the sin becomes a crime. In fact, many crimes were sins in earlier manifestations. A further characteristic of sin lies in the fact that its punishments are not social, at least not legally so. Social displeasure and ostracism, however, may be as cruel and relentless as any legal form of punishment.

2. *Vice.* We have defined vice above as a social manifestation of sin. The term *vicious* has come in common parlance to mean any form of conduct which is flagrantly and openly contrary to moral regulation. Viciousness is a manifestation of utter disregard for restraining influences either moral or legal. Since the most conspicuous manifestation of vice has been in connection with sex morality, the term has become generally accepted as standing for the violation of customary regulation in sex matters. In its common manifestations, vice is social rather than solitary. In spite of this fact, society has, since primitive times, been in difficulty in its attempts to establish legal regulations of it. It is not necessary for us to go into the reasons for this difficulty. It may be enlightening to state that we have in the matter of vice a natural law in conflict with both the moral and civil law.

In primitive societies, sex relationships are rigidly maintained by custom. In the less advanced stages of civilization, vice is protected by legal enactment. It is in societies where the moral and the civil codes approach closely that the difficulty of suppressing vice by law has been seen most clearly. Until recent times, it has been a common practice for legal authority to admit the impossibility of restraining vice by law. We are



witnessing, however, some thoroughgoing attempts to make vice and crime more clearly synonymous.

Like sin, vice becomes criminal when group rights are menaced. This has been recognized in legal distinctions between rape, prostitution, adultery, etc. With the growing knowledge of the social menace of venereal disease and the relation of vice to degeneracy, there has been a growing tendency to make vice criminal.

3. *Tort*. A tort is essentially a private injury as distinguished from a public wrong. It is the harm inflicted upon a man by his fellow man not regarded as a wrong done to the state, but one which gives rise to a civil suit for damages. In ancient times the injured man might have sought private vengeance and a blood-feud might have resulted. Later it became customary to accept arbitration and pecuniary compensation. Society gave a legal form to this arbitration and made the acceptance of the damages awarded compulsory, unless the plaintiff chose not to press his suit. Thus, for a tribesman to kill or steal from another member of his tribe was a tort which demanded vengeance or compensation.<sup>6</sup>

Tort is partly individual and partly social in its nature. It has to do with the individual rights of associates. It borders very closely on crime. Whenever damage to an individual is so serious as to involve the interests of society the line of demarkation between tort and crime must be drawn by the civil authorities. Certain actions may be both crimes and torts at the same time. When such cases occur the state proceeds against the offender to exact a penalty and the injured person may sue for damages if he so desires.

4. *Crime*. When any one of the foregoing forms of conduct has attracted the attention of the social group and has been considered dangerous to social well-being, it is forbidden by law and a penalty is attached for violation. A crime, then, is that action or lack of action which in some way violates not only the moral code or the individual rights but in addition to

<sup>6</sup> A. C. Hall, *Crime in its Relations to Social Progress*, p. 16.



them or independent of them violates the code which safeguards the interests of the whole social group. It is recognized as a distinct social menace. It is antagonistic to the social order. Sin, vice, and tort, may be unsocial,—crime is distinctly anti-social. We must, however, make a distinction between the word *crime* used in its legal sense and the term *anti-social*. As Henderson points out, “men of superior type may disobey the law under the exceptional stress of circumstances and be convicted of crime in the legal sense; and, on the other hand, colossal wrongs may be perpetrated, and in fact are frequently committed, for which there is as yet no statutory condemnation or penalty. Furthermore, there are habitual offenders against morality who have not yet committed deeds which are called crimes, but who are forming habits and associations which must inevitably bring them into sharp conflict with the officers of justice if they continue to travel in the direction in which they are now moving. Strictly speaking, an anti-social act cannot be called a crime until it has been defined by the public authorities and due notice given that it will be punished.”<sup>7</sup>

## VI. EARLY NOTIONS OF CRIME

Crime is thought to be as old as human society. In fact, some writers have endeavored to demonstrate that crime has its counterpart among the higher animals.<sup>8</sup> A brief glance at the conditions of our primitive ancestors will suffice to reveal the contrast between their notions of crime and ours. To begin with, the number of acts which were thought of as criminal was relatively small. Oppenheimer, adapting the earlier catalog of Steinmetz, groups primitive crimes as follows:<sup>9</sup>

1. Treason. 2. Witchcraft. 3. Sacrilege. 4. Incest and

<sup>7</sup> C. R. Henderson, *Prevention and Correction*, vol. 3. *Preventive Agencies and Methods*. p. 3.

<sup>8</sup> A. Lacassagne, in *Revue scientifique*, Jan. 14, 1882. E. P. Evans, *Evolutional Ethics and Animal Psychology*, p. 230. C. Lombroso, *L'homme criminel*, Vol. I., chap. I. M. Parmelee, *Criminology*, p. 7, f.

<sup>9</sup> H. Oppenheimer, *The Rationale of Punishment*. p. 71.

other Sexual Offenses. 5. Poisoning and allied offenses. 6. Breaches of the hunting rules.

The reader will note that some of these crimes are almost forgotten among us and that this list does not include murder, theft and other crimes against property which are common today. In fact, so few of the acts considered criminal among us at present were so considered among primitive people that the theory has been advanced that all crimes were originally personal offenses or torts.<sup>10</sup> This notion, however is hardly borne out by the facts. The catalog of crimes given above includes acts which were conceived of as impersonal and as in some way endangering the whole group. Since that group was relatively small and highly homogeneous, it would probably be introducing a modern concept to say they endangered the whole society. It is probable that these acts or some of them were considered as crimes among the earliest groups of which we have any considerable knowledge.<sup>11</sup>

Knowledge of the nature and conditions of primitive society enables us to understand why some of these acts were considered criminal. The traitor, for instance, was the man who betrayed the group to the enemy and was, consequently, to be considered an enemy, to receive the treatment accorded to an enemy. Witchcraft, like treason, endangered the group by exposing it to the machinations of evil spirits, who, to primitive men, were just as real and far more dangerous than living enemies. Sacrilege, from the violation of taboo to antagonism to powerful deities, likewise endangered the group by offending the superior powers. The reasons for including incest and poisoning in the list of crimes is not so clear, but there were undoubtedly certain connotations in the minds of primitive men which identi-

<sup>10</sup> For criticism see E. H. Sutherland, *Criminology*, pp. 25, 26.

<sup>11</sup> S. R. Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*. Vol. II. pp. 327-348. H. Oppenheimer, *op. cit.* A. C. Hall, *Crime in its Relation to Social Progress*, chap. III. also Hobhouse, Wheeler and Ginsberg, *The Material Culture and Social Institutions of the Simpler Peoples*, p. 79.



fied these acts in some way or other with forces or conditions unfavorable to the whole group. In the hunting and fishing stages of culture, especially in societies where the numbers pressed closely upon the food supply, violation of hunting rules might easily jeopardize the entire group.

Side by side with these acts from the earliest times have been other acts of a personal character which we have come to call torts. They injured individuals but were not considered as dangerous to the whole group. They gave rise to personal retaliation or vengeance and were of moment to individuals and their near kindred. Crimes against the person and crimes against property, which make up the bulk of offenses today, were originally torts involving retaliation or vengeance. They continue to be personal matters until a relatively high stage of civilization is reached. The history of crime shows these acts slowly passing over into the field of crimes as private vengeance gives way to law and legal procedure against offenders. Sutherland presents an interesting description of how this transition may have taken place.

“The transition from tort to crime occurs as follows in general, not in the same sense that these are a direct chronological series, but in the sense that viewed from the present time they show some logical development. First the chief or some other important member of the community was called upon to help the weaker families or others who were unable to secure self-redress for private injuries. Before giving such assistance he might find it advantageous to consider the merits of the case. This was something like a trial. Then the group placed restraints upon the injury done to the aggressor as follows: (a) the community adopted the *lex talionis* or the law ‘an eye for an eye and a tooth for a tooth’ as the standard of vengeance. This was not only the law of self-defense but it also fixed a limitation on the amount of injury that could be done in taking revenge. It was designed to secure equality in the offense and the penalty and was worked out very meticulously. . . . (b)



Then the group required an announcement by the avenger that he intended to seek redress or that he had already sought and accomplished it. (c) Then the group required the avenger to secure the consent of the group before starting in pursuit of the wrong-doer. This made an impartial investigation still more necessary but the penalty was still executed by the victim or his relatives. (d) Composition was developed, which meant that something might be taken as an equivalent of the physical suffering. At first this substitute appears to have been public shame, but later it was always money or other things of commercial value. The state merely fixed the scale of composition,—so much money to be paid to the victim for so much injury with the damages graduated to the status of the victim. Later the state took a part of this money, in the form of the costs of the trial, and this part was gradually increased until it came to be the whole amount and the modern system of fines was the result.”<sup>12</sup>

The final passing of retaliation occurs with the effort to prevent turmoil by declaring “peace” in given communities in which private vengeance is not permitted. Peace was gradually extended to the entire state and the breach of it became a crime. Personal action now is limited to self-defense or action to prevent the commission of a crime.

In primitive society there were certain acts now considered criminal which were then neither torts or crimes. A man under certain circumstances might kill his aged relative, his wife, or his child without fear of punishment or vengeance. These were “family matters” with which the group was not concerned and in which the offenses were between kindred. The only attitude of society in such cases was one of disapprobation which did not resort to physical force to influence conduct. The group did not consider itself injured and the offender, being next of kin, could not be expected to take vengeance upon himself. Society has to wait for the development of certain notions of

<sup>12</sup> E. H. Sutherland, *Criminology*, pp. 27, 28.

the sanctity of human life before it interferes in such matters and makes these acts criminal.

### 1. *Simple and Complex Culture and Crime.*

There were certain conditions in primitive society which made criminal acts rare. It is probable, also, that acts involving retaliation were correspondingly rare. The group was relatively small and there were no strangers in it. The force of custom was very powerful as a restraint upon impulsive action. There was little opportunity for the offender to escape the consequences of his acts, since to leave the group in many instances meant to fall into the hands of the enemy. For a long time among primitive peoples outlawry was equivalent to death. The individual existed with difficulty outside his group.

Crime is thought to have increased in the number of criminal acts and in the number of offenses with the advance of culture which increased the size of the aggregation and brought larger groups at different levels of culture in contact with each other. With the breaking down of hostility between groups over large areas, moving about of individuals became possible and homogeneous bodies of men began giving place to more mixed bodies. The addition of aliens with differing *mores* and culture standards had a tendency to break down the rigidity of custom and anti-social acts naturally increased. Progress toward higher civilization is accompanied by increasing complexity of relationships and stricter supervision over the conduct of the individual by the group. Response to civil law is never as spontaneous and unreasoned as was obedience to custom which it supplants. With the refinements of higher civilization, legislative enactments regarding conduct tend to increase constantly. It seems logical to believe that as the exactions of society become numerous we may expect to find an increasing number of individuals unable to comply with them. There should be a point in social progress, however, where the exactions of the



group become adjusted to the capacity of the masses to conform.

## *2. Crime and Social Progress.*

The adaptation of individuals to the increasing complexity of social requirements has attracted attention in two distinct ways. Hall's studies called attention to the fact that there has been a subtle transformation taking place in man's behavior which has resulted from his slow removal from the rugged conditions of life in barbarism and the lower levels of civilization. The increase in the amount of crime seems to have been accompanied by a modification in the violence and seriousness of criminal acts. "That crime has increased till now, this work will give the evidence, so far, at least, as the English speaking people are concerned. But the nature of crime has changed and will continue to change, from more to less heinous offenses, if we may judge from the standpoint of present public opinion: Under the rule of law, men have learned to curb their hasty passions. Crimes of force show a very great decrease during the last few centuries and they are decreasing still." <sup>13</sup>

On the other hand, there are indications that social activity to prevent delinquency and to rehabilitate such persons as have started upon careers of crime by various reformatory methods and by social readjustments where the incipient delinquency is obviously the result of environmental conditions is definitely lessening the tendency to resort to traditional penal measures. Social work in homes and in schools and much work with and for children (which is sometimes called work with and for pre-delinquents) may be expected to check materially the numbers appearing in our juvenile courts. Whether this will offset eventually the increase in delinquency which might be expected with increasing irregularity in family and community life and actually bring about a decrease in the number of court cases remains to be seen.

<sup>13</sup> A. C. Hall, *Crime in Its Relation to Social Progress*, chap. I.



## VII. IS CRIME INCREASING?

Toward the close of the last century and during the first few years of this, standard works on crime gave considerable attention to the question of the increase of criminality. "The problems of criminality," writes Havelock Ellis, "are becoming every day more pressing. The level of criminality, it is well known, has been rising during the whole of the nineteenth century throughout the civilized world. In France, Germany, Italy, Belgium, Spain and the United States the tide of criminality is becoming higher steadily and rapidly. In France it has risen several hundred per cent; so also for several kinds of serious crime in many parts of Germany; in Spain the number of persons sent to imprisonment nearly doubled between 1870 and 1883; in the United States the criminal population has increased during thirty years relative to the population by one third."<sup>14</sup> Dr. Drähms as well as Hall called attention to the fact or what was thought to be a fact that the rapid increase in the amount of crime appeared to be a change in the direction of minor offenses rather than serious ones and that serious forms of crime were tending to decrease in some countries.<sup>15</sup>

The figures upon which Ellis based his judgment, at least those for the United States, are now known to be unreliable. In fact, with all the data available up to 1922, there is a serious question whether there is actually an increase in the amount of crime out of proportion to the increase of population. Statistics gathered from the entire country for different periods have differed so greatly in the matter of information gathered that comparison is of little value; while conditions in different communities at the same and at different times vary so much that local figures are of little value for comparison with other communities or for the same community at different times.

<sup>14</sup> Havelock Ellis, *The Criminal*, p. 369. 1903.

<sup>15</sup> A. Drähms, *The Criminal*, chap. X. 1900.

Whether we count prisoners in institutions, the number of convictions, the number of arrests, or the number of crimes reported, in each case we have unreliable data upon which to base an estimate of the actual amount of crime at a given time or its increase or decrease from year to year.<sup>16</sup>

A number of factors are responsible for this unreliability of recorded data as indicative of the actual increase, decrease, or static condition of crime. It will suffice to mention only a few of them here. Increased activity of the police and seasons of unemployment will produce an increase in arrests. Fluctuations in the attitude of communities toward certain forms of crime may increase or decrease convictions. Judges vary in their attitudes toward offenders, some being given to imposing fines, others to suspended sentences and still others to sentences to imprisonment. Statistics of commitments to penal institutions will vary, consequently, in different precincts, districts and counties.<sup>17</sup> Convictions in the higher courts fluctuate from year to year with a tendency to increase in New York and decrease in Iowa. From 1901 to 1922, convictions in the Superior and Lower courts of Massachusetts, the Superior courts in North Carolina, and Common pleas and District courts in Ohio fluctuate from year to year around a norm which rises only slightly during the period. During the same period there is a distinct increase in convictions in the Michigan County courts.<sup>18</sup> Queen's study of County Jails published in 1920 showed that in two California Counties convictions of persons booked varied from 5 per cent in one to 85 per cent in the other.<sup>19</sup> In 1916, discharges in the Magistrate's Courts in New York City in all offenses varied, according to the magistrate, from a maximum of 42.6 per cent to a minimum of 3.9 per cent.<sup>20</sup>

A preliminary announcement of the United States Bureau of

<sup>16</sup> E. H. Sutherland, *Criminology*, chap. II.

<sup>17</sup> *Ibid.*, p. 48.

<sup>18</sup> *Ibid.*, p. 47.

<sup>19</sup> S. A. Queen, *The Passing of the County Jail*, p. 4.

<sup>20</sup> New York City, *Report of City Magistrates' Court*, 1916, pp. 33-63.



the Census made the following comparison for 1917 and 1922: "The rate of increase in federal prisoners was 13.1 per cent, in state prisoners 10.1 per cent. The ratio of federal prisoners per 100,000 population increased from 3 in 1917 to 5.1 in 1922, and the corresponding ratio for state prisoners increased during the same period from 72.4 to 74.5. . . . For county institutions the average number of prisoners decreased from 16.2 in 1917 to 14.7 in 1922, and for city institutions it fell from 10.1 in the earlier year to 8 in the later. The number of empty county jails and other county institutions decreased from 623, or 24.2 per cent of the total for which reports were received in 1917 to 570, or 18.9 per cent of the total in 1922. On the other hand, the number of city institutions reporting no prisoners increased from 1169, or 49.7 per cent of the total in 1917, to 1390, or 51.3 per cent of the total in 1922.<sup>21</sup>

In a like manner the development of a tendency to impose fines rather than prison sentences decreases the number of prisoners in a given state. This is apparent in Massachusetts and California. In the former state in 1910, 33 per cent of the sentences imposed were for imprisonment or fine and imprisonment. In 1920 the number of such sentences had fallen to 9 per cent. In California 67 per cent of all persons convicted of felonies were sentenced to state prisons in the biennium 1904-06. The number of such sentences fell to 41 per cent in 1918-1920.<sup>22</sup>

In a like manner, an increasing use of the parole in various states will decrease the prison population of those states and give them a favorable comparison with other states in the number of prisoners in penal institutions.

### VIII. INCREASING PROHIBITIVE LEGISLATION

Up to the present time, the advance of civilization has been accompanied by increasing exactions on the part of society in

<sup>21</sup> United States Bureau of the Census, preliminary announcement, *Prisoners in Penal Institutions*, 1917 and 1922, p. 2.

<sup>22</sup> E. H. Sutherland, *Criminology*, pp. 53, 54.



the matter of the conduct it requires of its members. A comparison of older and newer communities indicates that many forms of conduct tolerated in pioneer and agricultural communities have become intolerable in cities and in the older states. In 1910, in New England, approximately 33 persons per 100,000 of the population were committed to penal or reformatory institutions for assault; while in the West South-central States the number was only 22.8 per cent.<sup>23</sup> In like manner the passage of sanitary and health legislation increases the number of offenders without a corresponding increase in criminality. On a more grave scale, criminality has been increased in one direction while it has been lessened in another by laws prohibiting the manufacture and sale of intoxicating liquors. With the shifting of the prohibition movement to a national basis, violations of the prohibition laws become federal crimes without their becoming one whit more dangerous to society. Introduction of game laws and laws against smuggling bring with them a large number of violations without any indication of increasing depravity. Such multiplication of acts considered crimes leads to an increase of offenses of apparent seriousness out of all proportion to the true social significance.

The increase of criminality due to the refinement of the criminal code is not necessarily a cause for alarm. Crime of such a character is the activity, in a large measure, of a portion of the population that is not a real menace to society. It is the activity of that portion of the social group which has not kept pace with the law-making portion in moral refinement. This is especially true where ideas of reform are put into legislation by a narrow majority, leaving a considerable proportion of the people not bound by a sense of moral obligation other than a respect for the law. In these cases, however, there is likelihood that reform may be based on erroneous notions which are not a true register of moral progress. On the whole, criminality due to increasing legislation is a sort of secondary evidence of moral progress which enlarges the field of restraint.

<sup>23</sup> *Ibid.*, p. 53.

## IX. CRIME AS A FIXED QUANTITY

Ferri and others who were inclined to look upon crime as a natural result of conditions in society which varied only slightly from time to time were of the opinion that crime is the result of conditions so static that the amount could be predicted from year to year with a considerable degree of accuracy.<sup>24</sup> Drähms was of the opinion that any increase of crime would be found in petty offenses and that serious forms of crime were decreasing.<sup>25</sup> "The increase of crime," he says, "has been the prolific theme, alike on the part of pessimist and optimist, both of whom generally approach its oracular altars with 'prejudice aforethought,' and shape their conclusions in accordance therewith."<sup>26</sup> Much more recently Judge Olson expressed the opinion that two per cent of the population is and always has been criminal and that nothing we have been able to do has had an appreciable effect upon this proportion.<sup>27</sup> G. C. Henderson is inclined to place this figure at about one per cent.<sup>28</sup>

## X. CONSTRUCTIVE EFFORTS SHOULD SHOW RESULTS

We have only just begun constructive efforts to anticipate criminal activity by correcting conditions which cause it. The program for detecting and treating the pre-delinquent is only at its inception. Scientific handling of any considerable number of our offenders other than juveniles is so rare that results appear only in isolated instances which as yet do not affect the total to any appreciable extent. Undoubtedly many juveniles have been saved from criminal careers, but how many we have no way of knowing.

Some of our constructive efforts, however, have been going

<sup>24</sup> E. Ferri, *Criminal Sociology*, p. 76.

<sup>25</sup> A. Drähms, *The Criminal*, chap. X.

<sup>26</sup> *Ibid.*, p. 239.

<sup>27</sup> Quoted in Hoag and Williams, *Crime, Abnormal Minds and the Law*, p. 8.

<sup>28</sup> G. C. Henderson, *Keys to Crookdom*, p. 4.



on long enough for us to get what appear to be indications of a measure of success. Statistics from various parts of the country indicate that fewer children are now brought before the courts than was the case a few years ago. In the two largest cities, New York and Chicago, the decrease has been marked. In New York during each of the last three years the delinquent and neglected children cared for by the children's court have shown a decline of more than 3,000 over preceding years. In Chicago, the number of children before the Juvenile Court decreased from 5238 in 1919 to 3350 in 1923, a decrease of more than thirty per cent. In explaining the decrease in cases before the children's court of New York City, Franklin Chase Hoyt, the Presiding Justice points out a number of causes. "The decrease," he says, "is the result of civic and social effort to eliminate the causes which have been responsible for delinquency and neglect. The work of prevention, which has been engaging the attention of so many agencies and organizations; the awakening public conscience and intelligence as evidenced by the activities of the settlements, community centers, clubs, parents' associations and the like; the development of the probation system; the intensive efforts of the court itself,—these are some of the things that have improved the conditions surrounding children of all communities."<sup>29</sup> It seems reasonable to believe that this decrease may become more marked as our constructive and preventive efforts become more widespread. That such efforts may yet offset the influence of certain demoralizing factors inherent in the increasing complexity and artificiality of civilization and materially decrease the amount of crime is well within the realm of possibility.

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## X

# DEFINITIONS AND CLASSIFICATIONS OF CRIME

### I. PRELIMINARY DEFINITION

IN the preceding chapter it was pointed out that an act to be criminal must be so considered at a given time and place. It was further pointed out that acts which are declared to be criminal by law are likely to have been earlier considered criminal by custom. Taking into consideration the elements of time, place and the attitude of custom we have a sociological definition as follows:

*Crime is the infraction or violation of established or codified custom or public opinion at a given time.*

On account of the fluctuating character of crime, society is always involved in the difficulty of keeping the legal code adjusted to the conditions which make acts criminal. For purposes of repression, the state is obliged always to work within the limits of the code. The code, in the nature of things, never quite conforms to the conditions which make acts criminal. In consequence, society is always endeavoring to prevent criminal acts which are not yet registered in legislation; and a certain part of its law always suffers from being deprived of the support of customary will. In other words, crime, in a sociological sense, is always a shifting thing, a part of which stretches ahead of legal enactments; while legal crimes always embrace certain forms of conduct from which the odium of social disapproval has fallen away.

## II. DIFFICULTIES IN A LEGAL DEFINITION OF CRIME

This inadequacy of the law seems to be inherent in the nature of the devices with which society equips itself for doing what it considers to be necessary. The exact nature of an act is often in doubt. Society is faced with the necessity of knowing exactly what has occurred in order to invoke the law which must be specific. In attempting to resolve these difficulties society finds itself in possession of a body of law of which a considerable part is inadequate to meet the requirements of society, while another part of which is rapidly becoming obsolete. In these two marginal fields, convictions are difficult. In order to secure them we resort to manipulations to make the law fit the act or the reverse. Under these circumstances travesties of justice are frequent and many crafty rogues go unpunished, to say nothing of other familiar abuses.

The legal definition, therefore, is never quite the same thing as a sociological definition. Technically, from the legal standpoint, the enactment forbidding an act causes the act forbidden to become a crime at that moment. As a corollary of this, therefore, no act is a crime which is not legally forbidden. Familiar efforts to escape from these difficulties give us the simple definition, *crime is the violation of the law*. The body of fact which creates this difficulty is not to be waived out of existence in this arbitrary fashion. The legalist, to all intents and purposes, may accomplish the feat, but for the sociologist the conditions remain. The legalist may reply that society cannot proceed on any other basis, and that the difficulty, consequently, is unavoidable in the nature of things.

The attempt to carry out this fiction that the act becomes crime by fiat involves us in other difficulties in addition to those of procedure. For instance, an individual may be acting in a certain manner today and be a perfectly normal person. Tomorrow the act is forbidden by law and in some mysterious manner he has become a criminal. It is, of course, absurd to



assume that some subtle change has occurred in the individual over night. If we attempt to escape from this we are driven to place the criminality in the act instead of the doer, which, in turn, is pure fiction. Criminality is much more fundamental than the chance doing of the forbidden thing. In order to escape from this difficulty the law is driven to take cognizance of such technicalities as intent, design, malice aforethought, and knowledge of the law, thus adding to the confusion of an already complicated situation.

State codes in America usually contain the following definition of crime:

*Crime is an act or omission forbidden by law and punishable upon conviction by:*

1. Death; or
2. Imprisonment; or
3. Fine; or
4. Removal from office; or
5. Disqualification to hold any office of trust, honor or profit under the state; or
6. Other penal discipline.

### III. THE PROBLEM OF LEGAL SANCTIONS

This generally accepted legal definition of crime reveals another aspect of the problem which confronts society in its dealings with criminals. In reality, a legal enactment declaring an act to be a crime does not make it a crime unless provision is made for punishment in the case of violation. "Punishable upon conviction," therefore, becomes the sanction or force upon which the law depends for compelling obedience. Here again we are dealing with an element of fiction because the law in a sense falls short of its objective every time a crime is committed. The law and the punishment were designed to prevent the crime. In each case of crime they have not succeeded. Procedure against the offender with a view to carrying out the threat which the sanction implied, is obviously aimed at

a future result,—to prevent others from violating the law and to prevent repetition on the part of the present offender. Punishment after the event is an admission that the law has failed in this particular case. Society, then, is in the position of trying to save what it can from the wreckage.

This brief analysis of legal procedure against criminals reveals still further the complicated character of the problem with which society is obliged to deal. The nature of law is such that society can take action *only after the event*. Since we are much more concerned to see that forbidden acts do not occur, it becomes obvious that some other provision than, or in addition to, legal sanction or punishment is necessary. This will become increasingly evident as we proceed.

#### IV. MAKING THE PUNISHMENTS FIT THE CRIMES

Since the sanction is a necessary part of the law, some arrangement must be made for determining by law just what punishments may be expected in case of violations of a certain kind. This necessity still further complicates the matter, since in each case of procedure against an offender, both the nature of the act and the nature of the punishment must be determined. In order to reduce the limits of uncertainty in the latter case, the law has endeavored to label and classify forbidden acts on the basis of the amount and character of the punishment to be attached to each. Crudely, society has endeavored to adjust the punishment to the gravity of the offense which, in its turn, is determined by the importance which the group attaches to the acts which it desires to prevent.

In the definition of a crime which we have just given, we have the basis for a classification of punishments. These range all the way from the complete effacement of the offender, through certain forms of inconvenience, to the imposition of conditions involving shame and humiliation. The adjustment of these to the conditions of each individual crime involves the complications of court procedure, and the court is faced with the neces-



sity of determining just what has been done and of fixing the amount and character of the punishment which should be meted out for that particular offense. Toward the simplifying of this condition the code cannot go beyond a certain point of definiteness. This limitation is recognized in the classification of crimes and the adjustment of punishments to them as nearly as possible. Different societies and different groups within societies have made classifications of crimes on the basis of their own needs or interests. Law-makers, grappling with the problems which we have been discussing, have given us the classifications of crimes found in the state and national codes. Police-men and detectives classify illogically and at great length on the basis of the nature of the act. Criminals classify themselves and their crimes with great minuteness and discrimination on the basis of method. The news-papers and the public employ a singular mixture of these which serves fairly well as long as we do not attach too much importance to it.

#### V. COMMON CLASSIFICATIONS OF CRIMES AND CRIMINALS

Criminals are commonly classified by the police, court officials, penal officials, news-paper men and writers of fiction on the basis of the crimes which they commit or the particular method which they employ in committing them. G. C. Henderson, in a recent work, has attempted to popularize much useful information regarding criminals and their crimes.<sup>1</sup> In this work chapters are devoted to the following:

Thieves; pickpockets; burglars; safe-crackers; robbers; bandits; swindlers; forgers; counterfeiters; criminal promoters; confidence men; gamblers; arsonists; grafters; murderers; and several other specialized groups such as book-makers, bucket shop keepers, and dealers in illicit goods such as boot-leggers and narcotic peddlers.

Still further division is made among types of offenses on the

<sup>1</sup> G. C. Henderson, *Keys to Crookdom*. An appendix contains an interesting dictionary of criminal terms.



basis of method. For instance, the police speak of burglars as "porch climbers," "second story men," "front door men," "cellar men," "jimmies," etc., on the basis of their method of gaining entrance to houses. "Con men" and "bunkos" are types of swindlers. "Prowlers" and "sneaks" are thieves who get into houses without forcible entry. Such illustrations could be multiplied almost indefinitely. While there is a great popular interest in such classifications they are of practically no value for administrative purposes. Knowledge of the methods of a particular criminal, however, is of great value to the police in detecting crime and catching offenders.

## VI. LEGAL CLASSIFICATIONS OF CRIMES

Legal classifications of crime which are employed in Western Europe and America have a history of gradual development. With the development of centralized power in the growing states great importance was attached to treason, so that it was usually punished by execution. The gradual development of composition or the paying of a property indemnity gave rise to the recognition of a group of heinous offenses for which composition could not be made.<sup>2</sup> These came to be called felonies. These included crimes against the person, namely murder, manslaughter and rape; and crimes against property, including arson, burglary, theft or larceny, and robbery. With these at one time or another have been included wounding, mayhem and false imprisonment. Crimes of less gravity have come to be known as misdemeanors which are also sometimes called transgressions and trespasses. In most European states there is a subdivision of these lesser crimes into trespasses and misdemeanors, or misdemeanors and "petty offenses."<sup>3</sup>

In the English law the body of crime is divided on the basis

<sup>2</sup> F. Pollock and F. W. Maitland, *History of the English Law before the Time of Edward I*, Vol. II. 460-509.

<sup>3</sup> E. Jarno, *The Penal Codes of France, Germany, Belgium and Japan*, edited by S. J. Barrows, pp. 15-17. F. von Liszt, Editor, *Le droit criminel des états européens*. M. Parmelee, *Criminology*, pp. 264-268.

of the manner of procedure employed in its repression. These are, with subdivisions: <sup>4</sup>

I. *Indictable offenses*, which admit of trial by jury.

1. Treason.

2. (Other) Felonies.

3. Misdemeanors.

II. *Petty offenses*, tried by magistrates without a jury.

This amounts, practically, to a three-fold division of crimes into *felonies*, *misdemeanors* and *petty offenses*.

A similar classification appears in the French code and those of most European states with the substitution of the word *crimes* for *felonies*.<sup>5</sup> This in reality is an admission that the lesser offenses are not really crimes. This same tendency appears in America where "trespassers" are not considered as criminals.

In the laws of American states the definition of crime is usually followed by the following classification:

Division of Crime. A crime is

1. A felony; or

2. A misdemeanor.

Felony. A "felony" is a crime which is or may be punishable by

1. Death; or

2. Imprisonment in a state prison.

Misdemeanor. Any other crime is a "misdemeanor."

This is a candid classification of crimes on the basis of the punishment allotted to each. This works either way with equal facility. A crime which is punishable with death or state prison is a felony. A crime not so punishable is a misdemeanor. The difficulty of further definition is obvious.

The United States Census for 1890 attempts to distribute the volume of crime in the United States in the following classification:

*Crimes against the State or Government*, 2.2 per cent of all

<sup>4</sup> C. S. Kenny, *Outlines of Criminal Law*, p. 91.

<sup>5</sup> E. Jarno, *op. cit.*

crimes. These include assassination of rulers, attacks upon the government, insurrection, treason, counterfeiting, bribery and corruption of officials, anarchy and communism.

*Crimes against Society*, 22.9 per cent. Among these are rioting, disturbing of the public peace and order, corruption of public morals, perpetuating or maintaining nuisances, polluting water supplies, violation of election laws, bribery or corruption of voters, destruction of public property, embezzlement or misuse of public funds, malfeasance in office, obstruction of highways, endangering public travel, violations of excise and license laws, disturbance of public meetings, drunkenness, prostitution, etc.

*Crimes against the person*, 21 per cent. Such as murder, homicide, assault with intent to kill, assault and battery, adultery, abortion, dueling, incest, rape, seduction, sodomy, libel, and mayhem.

*Crimes against property*, 45.8 per cent. Such as burglary, robbery, theft, arson, embezzlement, gambling, fraud and perjury.

*Miscellaneous crimes not classified above*, 8.1 per cent.

## VII. VALUE OF LEGAL CLASSIFICATIONS

The value of legal classifications of crimes lies solely in their relation to procedure. The type of crime determines within certain limits the method of procedure in the attempt to convict and also determines within certain limits the form of punishment employed in case of conviction. This value holds only so long as we cling to traditional ideas of the purpose of punishment. Viewed from the standpoint of social protection such classification has little or no value for the reason that penal discipline is rarely reformatory and in effect it restrains the average criminal for so short a time as scarcely to interfere with his anti-social activities. In spite of the extended use of the indeterminate sentence, our law still requires us to liberate annually large numbers of prisoners who are probably more



dangerous to society at the time of their liberation than they were when they were imprisoned. The length of the sentence is still determined to a considerable extent by the nature of the act. At the expiration of the sentence, we are still legally obliged to set the prisoner at liberty *regardless of the extent of his menace to society*.

#### VIII. SCIENTIFIC VALUE OF LEGAL CLASSIFICATIONS

Viewed from the standpoint of modern criminal science, the value of such classifications of crimes is *nil*. The kind and length of treatment should be determined by the condition of the offender. Of this condition, the crime is only one of many indications. There may be little relation between the nature of the criminal act and the physical or mental condition of the offender and his menace to society. Some apparently trivial offense which might be classified as a misdemeanor or a trespass might indicate a condition of menace to society in the doer which would justify permanent removal from social life. Such removal, however, would not partake of the nature of punishment.

The substitution of scientific for traditional procedure in the treatment of criminals both before and after conviction would render our classifications and much of our procedure obsolete. With these would go our legal definition of crime. Meanwhile, we shall witness the reluctant substitution of clinical methods of treatment of criminals for our present formal methods. Legal conservatism may be expected to yield ground to science very slowly under the influence of public opinion. The rate of transition should be accelerated, however, as the training of the legal profession comes to include more sociology and psychiatry.

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## XI

### THE PHYSICAL AND SOCIAL ENVIRONMENT IN THE CAUSATION OF CRIME

#### I. ENVIRONMENTAL FACTORS

CRIME does not exist apart from society. A solitary individual occupying an isolated habitat could not commit crime. Without the injection into his situation of relationships, either real or imaginary, he could not commit sin; neither could he become immoral. All of the concepts inherent in these terms are born of association and not only have no reality but could not come into existence without it.

In a sense, then, crime is the product of association. To say that association is the cause of crime, however, would mean no more than to say that it is the cause of good, or virtue, or righteousness. All of these are concepts born of social life and have no existence apart from it.

Nevertheless, society cannot escape from certain influences in its physical environment. After a group has done what it is able to do in the way of adaptation, the conduct of associates is influenced by their physical surroundings far more than we have commonly supposed. We have already called the reader's attention to the extent to which crime, especially during the latter part of the nineteenth century, was considered to be the result of factors exterior to the offender. According to Ferri, factors of the physical environment are the density of population, the nature of the soil, the relative length of day and night, the seasons, the average temperature, meteoric conditions, and agricultural pursuits.<sup>1</sup> "No crime," he says, "whoever commits it and in whatever circumstances, can be explained except

<sup>1</sup> E. Ferri, *Criminal Sociology*, p. 52.



as the outcome of individual free will, or as the natural effect of natural causes. Since the former of these explanations has no scientific value, it is impossible to give a scientific explanation of crime unless it is considered as the product of a particular organic and physical constitution, acting in a particular physical and social environment.”<sup>2</sup>

In the following pages we shall attempt little more than an enumeration of the physical and social factors to indicate their relation to crime. Certain of these have been studied in great detail and exhaustive literature is available for those desiring to pursue this discussion at greater length.<sup>3</sup>

## II. INFLUENCE OF CLIMATE

While it may not be shown that there is much difference in the amount of crime in different climates under similar cultural conditions, it appears that climate has some influence upon the kinds of crimes committed. Without attempting to give reasons for the facts, it appears that crimes against the person are more prevalent in warm countries than crimes against property. On the other hand, crimes against property are more prevalent in cold countries than crimes against the person. Furthermore, in countries which stretch for a considerable distance from north to south these differences may be noted in the colder and warmer sections of the country; and in countries where extreme variations occur in temperature at different seasons of the year, crimes characteristic of warm climates will predominate in the warmer season and those characteristic of cold climates during the colder. In countries with considerable variation in culture in the different sections, differences in latitude may be offset by differences in culture and economic situation.

<sup>2</sup> *Ibid.* p. 54.

<sup>3</sup> See G. Aschaffenburg, *Crime and Its Repression*, E. Ferri, *Criminal Sociology*, C. Lombroso, *Crime, Its Causes and Remedies*, F. Mayo-Smith, *Statistics and Sociology*, and M. Parmelee, *Criminology*.

Mayo-Smith cites figures for France which indicate that the proportions between crimes against property and against the person are almost exactly reversed between northern and southern parts of the country. For every 100 crimes against the person there were 181.5 crimes against property in Northern France, while in Southern France to each 100 crimes against the person there were only 48.8 crimes against property.<sup>4</sup> In Italy, Lombroso cited figures to show that crimes of violence were over four times as numerous in southern districts as they were in the extreme north. His figures for crimes against property seemed to indicate that the climatic influences were offset by cultural and economic differences which made figures for aggravated theft practically identical in the extremes and much higher in Central Italy and in Sicily.<sup>5</sup>

### III. SEASONAL INFLUENCES ON CRIME

Aschaffenburg quotes figures from Ferri showing seasonal influence on sexual crimes in France from 1827 to 1869. These show a distinct maximum in June and a minimum in November for sex offenses against adults and against children.<sup>6</sup>

An analysis of statistics of crimes in Germany for the decade from 1883 to 1892 shows the following significant facts: Crimes against national laws, resisting an officer, breach of the peace, insults and simple and aggravated assault and battery rose from a minimum in winter months to a maximum in August. Rape rose from a minimum in January to a maximum in July, the latter being more than double the minimum. Obscene acts increased from a minimum in January to a maximum nearly two and a half times greater in June. Crimes against property, petty and grand larceny, embezzlement and fraud reach their height in early winter. Infanticide, which is closely associated

<sup>4</sup> F. Mayo-Smith, *Statistics and Sociology*, p. 270.

<sup>5</sup> C. Lombroso, *Crime, Its Causes and Remedies*, p. 13.

<sup>6</sup> G. Aschaffenburg, *Crime and Its Repression*, p. 16.



with poverty, had its minimum in August and its maximum in February and March.<sup>7</sup>

Statistics for tropical countries seem to indicate that there are not the same seasonal fluctuations in crimes in the warmer and cooler periods of the year to the extent to which they are found in more temperate climates.<sup>8</sup> Parmelee attributes this to the depressing influence of the very hot season and to the slight variation in human needs at any period of the year.<sup>9</sup>

#### IV. WEATHER INFLUENCES AND CRIME

The studies of weather conditions in relation to crime which were made by Dexter in New York City and in Denver seem to indicate an influence upon conduct of such phenomena as atmospheric pressure, winds, humidity, sunshine, rain and cloudiness.<sup>10</sup> He compared the record of arrests for assault and battery in New York City during the years 1891 to 1897 with the meteorological conditions during the same period. During these years the arrests amounted to about forty thousand. His conclusions may be summarized briefly as follows:

1. *Temperature.* During the period studied the number of arrests increased quite regularly with the rise of temperature.<sup>11</sup> This led Dexter to conclude that temperature more than any other condition affects the emotional states which are conducive to fighting. The curve for females rose more rapidly than the curve for males, which fact he interpreted as indicating that women are more susceptible to weather influences than men. "The general showing is one of marked deficiency for low temperature with a somewhat gradual increase to its maximum excess in the degrees of temperature between 80 and

<sup>7</sup> G. Aschaffenburg, *op. cit.*, p. 17.

<sup>8</sup> A. Corre, in *Archiv d'anthropologie criminelle*, vol. IV. p. 165.

<sup>9</sup> M. Parmelee, *Criminology*, p. 48.

<sup>10</sup> E. G. Dexter, *Weather Influences*, etc., Also "Conduct and the Weather," *Psychological Review*, May, 1899,

<sup>11</sup> *Weather Influences*, pp. 141 ff.



85, at which point a sudden drop takes place. This final decrease is in itself interesting. It seems without doubt to be due to the devitalizing effect of the intense heat of 85 degrees and above." Dexter's conclusion in this connection seems to corroborate that of Corre cited in the preceding paragraph.

2. *Atmospheric pressure.* The same study revealed the fact that the number of arrests rose as the barometer fell. Dexter interpreted this as having nothing to do with the actual weight of the atmosphere but attributed the increased criminality to the influence of low pressure periods preceding storms, which affect many persons and induce belligerency in some. The sexes appeared to be about equally affected in this particular.

3. *Humidity.* Low humidity was found to be accompanied by excessive assaults and high humidity seemed to exercise a restraining effect. "Days of high humidity are not only emotionally but vitally depressing, and we have the same element entering into our problem that we had in the discussion of excessively high temperatures. On such days we perhaps feel like fighting, but such a thing is altogether too much exertion, and the police records are none the wiser." This depressing influence of high humidity seemed to restrain the women more than the men.

4. *Wind velocity.* Moderate winds were accompanied by an excess of assaults. Calm and high winds were accompanied by deficiencies of fighting.

5. *Clear and cloudy days.* Cloudy days were found to be freest from personal encounters due, Dexter thought, to the depressing influence of gloomy days.

Dexter's study of murders in relation to weather conditions in Denver from 1884 to 1896 showed results to be about the same as in New York for temperature and atmospheric pressure but with reference to humidity, he found that murders increased during excessively dry periods, and seemed to accompany high winds. This he attributed to the high electric potentiality of the atmosphere under such conditions.

The foregoing and other conclusions of Dexter regarding weather influences seem to establish a definite relationship which it is difficult to isolate from certain other influences such as character of the population, topography, character of the culture, etc. Dexter himself pointed out that weather influences do not affect all individuals in the same manner and that pathological individuals are more susceptible to such disturbances.<sup>12</sup>

## V. ECONOMIC ASPECTS OF CRIME

There are many factors in the crime situation which present economic aspects. The intensity of the struggle for existence has its results in criminal conduct. The varying economic situations arising from the rotation of the seasons of the year register themselves in the rise and fall of the crime curve. Certain prevailing economic conditions, such as the price of food, economic depressions, and unemployment are very closely related to the volume of crimes against property. The economic status of the individual bears a close relation to the probability of criminal behavior; and the man's occupation and the general character of the dominating industries, combine with seasonal influences and general conditions of culture to determine the amount and nature of crime. It will suffice for our purposes to give very brief illustrations of each of these. It should be borne in mind here, also, that economic factors combine with numerous others in the production of the criminal act. While we may isolate certain factors for purposes of discussion, there can be no such separation in fact.

1. *The Struggle for existence.* In spite of the progress made by society in the direction of improving the lot of mankind, the accompanying rise in the standard of living tends to intensify the struggle for existence. While education, im-

<sup>12</sup> For a fuller discussion of Dexter's findings see M. Parmelee, *Criminology*, pp. 48-53.



proved conditions of health and living and vastly improved conditions for comfort and convenience have removed the masses in America far from the frugal conditions of a few generations ago, the accompanying rise in the cost of living has made the effort to maintain it increasingly strenuous. Individuals who are equipped with sufficient energy and intelligence to get on fairly well in a simpler mode of life find themselves unable to measure up to the requirements of a more exacting social order. Redoubled efforts to keep up the new conditions lead to overwork for men and to the increasing employment of women and children. The consequences may be demoralizing for the present generation and in some instances disastrous for the next. Under these conditions, certain individuals ill equipped either in mind or personality for this more intense struggle become sullen and resentful in failure and are easily persuaded or persuade themselves that society has not given them a square deal. Sometimes this attitude leads to the abandonment of an honest occupation and entrance into a criminal life. Such individuals even come to feel themselves justified in such conduct on account of the unsocial and immoral practices in business and industry which are unpunished or even rewarded with excessive profits. The sense of social injustice is responsible for the beginning of many a criminal career.

The multiple strains of our increasingly complicated civilization upon the human organism cannot fail to increase the numbers of the degenerates. In a large measure, crime is the activity of social wreckage which floats miserably along in the wake of progress.<sup>13</sup>

2. *Seasonal occupations and want.* We have already considered the increase of crimes against property in the colder months of the year in temperate climates. German statistics for the years from 1883 to 1892 show that simple and aggravated theft, embezzlement, robbery, receiving stolen goods, and fraud reached their maximum frequency in November or December. In all the frequency remains relatively high in

<sup>13</sup> P. A. Parsons, *Responsibility for Crime*, p. 16.



January.<sup>14</sup> In view of the well known fact that most seasonal occupations have a maximum of unemployment during the winter months, the relation of economic necessity to increased frequency of crimes of this character is obvious. At the same time that legitimate opportunities for self support decrease, there is an increasing necessity for warmer clothing, more fuel and shelter and better food.<sup>15</sup>

3. *Prices and wages.* Numerous statistical studies in European countries have shown the correlation between prices of commodities, wages, and exports and imports, and the fluctuations in crime curves.<sup>16</sup> Allowing for minor fluctuations which may be due to various causes, figures for England and Wales, France, and Russia show that crimes against property, principally theft, rise and fall with the price of the principal cereal food, either wheat or rye as the case may be. Only in occasional years do these curves move inversely or one remain constant while the other rises or falls. Occasionally there is a tendency for one curve to lag slightly. There is reason to believe that this correlation exists with a fair degree of regularity all over the world.

It can be demonstrated, also, that fluctuations in the rate of wages affect the amount of crime against property. In this case, however, the movement is in opposite directions. As wages fall, crimes against property increase while a decrease in crimes of this character accompanies rising wages. The relation between these two phenomena is not so close or so apparent as is that between crimes and the price of food. The fluctuations in wages are slower and spread over longer periods.<sup>17</sup>

In the same manner, periods of industrial depression are ac-

<sup>14</sup> M. Parmelee, *Criminology*, p. 70. See also his *Poverty and Social Progress*, chap. X.

<sup>15</sup> See relevant chapters in R. Seager, *Social Insurance*, E. T. Devine, *Misery and Its Causes*, Mayo-Smith, *Statistics and Sociology*.

<sup>16</sup> M. Parmelee, *Criminology*, pp. 71-75.

<sup>17</sup> For an interesting compilation of data on economic crimes, consult W. A. Bonger, *Criminality and Economic Conditions*.

accompanied by an increased amount of crime against property.

Efforts have been made to determine the percentage of the total crime of a given country and period which may be considered economic in character. Bonger gives estimates for various European states as follows:<sup>18</sup>

In Germany, from 1896 to 1900 49.89 per cent of all crimes were economic in character; in England, from 1881 to 1900, 36.78 per cent; in France for the same years, 60.9 per cent; in Italy from 1891 to 1895, 46.75 per cent; in the Netherlands, 42.12 per cent. As compared with these the report of the U. S. Census for 1910 indicates that less than one-sixth of the commitments in America for the preceding decade were for offenses against property. These figures, however, include statistics of petty offenses, most of which are not included in the European figures cited. If crimes of this character are omitted from the American statistics, crimes against property constitute nearly fifty per cent of those that remain.

4. *Economic status.* The majority of convicted criminals belong to the poorer classes. Just how much the proportions would be affected if we were able to catch and convict the many more intelligent criminals who now escape the law it is impossible to say. The fact remains, however, that the poor have greater inducements to crime than do the well-to-do, by reason of economic necessity and because of the paucity of diversions and the lack of opportunity for the satisfaction of perfectly normal cravings. We have very little data upon which to base estimates as to the exact economic status of criminals.<sup>19</sup> Basing his estimates on statistics for 1887-89, Fornasari di Verce compiles tables which seem to indicate that while about 60 per cent of the Italian population belong to the poorer classes, they furnish about 85 per cent or 90 per cent of the convicted persons. Bonger has collected some data of this character also.

<sup>18</sup> *Ibid.*, pp. 538-542.

<sup>19</sup> E. Fornasari di Verce, *La criminalità e le vicende economiche d' Italia dal 1873 al 1890*. Also W. A. Bonger, *op. cit.*, and M. Parmelee, *Criminology*, pp. 80, 81.



Here, as in the case of other causative factors, it is practically impossible to isolate economic status from other conditions such as physical and mental pathology and physical and social environment. Socialistic writers are inclined to overestimate the importance of economic status, just as certain social workers are inclined to attach too much importance to social and physical environment.

5. *Occupations and crime.* Occupation seems to bear somewhat the same relation to crimes against property as that borne by economic status, and for the same reasons. Here, also, while the relation is obvious, we are confronted by the same paucity of data. Aschaffenberg cites statistics for Germany in which he compares the crimes of a given occupation with the proportion of the general population which that occupation represents. He finds workmen engaged as wage-earners in industries, mining and the building trades, who constitute only 17 per cent of the general population, represent 30.4 per cent of all persons convicted for crimes. Laborers employed in agriculture, forestry, hunting and fishing constitute 15.6 per cent of the population and are convicted for only 18.9 per cent of the crimes, showing that laborers engaged in industries have a much higher rate than their fellows who are employed mainly outside of cities. In each case, men who engage in these occupations independently have a much lower rate of criminality than those working for a wage. In trade and commerce, however, those independently engaged have a rate much higher than their employees. Domestic servants, public officials and the liberal professions are the freest from crime with a rate of only about one-third of their proportion of the general population.<sup>20</sup> A similar but not so reliable table based upon Italian statistics cited by Bonger presents a somewhat different classification and places the highest criminality in groups engaged in commerce, transportation, navigation and fishing. This table, also, shows domestic servants with a rate of only 41 per cent of their proportion of the general population, and the

<sup>20</sup> G. Aschaffenburg, *Crime and Its Repression*, p. 66.



liberal professions, capitalists etc., with the lowest rate of any group.

Occupation seems to be especially conducive to juvenile delinquency. About 38 per cent of the delinquents in the Manhattan Children's Court in 1916 had been employed prior to court proceedings, though only about 10 per cent of the children of Manhattan in general were employed; these boys came almost equally from homes rated as good, fair, and bad, and there was little difference in average mentality, judged by the proportions in ungraded classes. The working boys committed more serious offenses and had a much higher percentage of recidivism. It was judged that in 28 per cent there was a direct connection between the delinquency and the occupation.<sup>20a</sup> Street trades in large cities contribute a large percentage of the inmates of correctional institutions.

"At one time in the Hart's Island Reformatory, 63 per cent of the inmates had been newsboys; in the Catholic Protectory 40 per cent had been newsboys; in the house of refuge 30 per cent of the younger boys had been engaged in this occupation, and at Randall's Island 70 per cent of the older boys had been newsboys. At Glenn's Mills, Penn.,—a large reform school, the percentage is even higher, being 77 per cent."<sup>20b</sup>

About fifty per cent of prostitutes are said to have been servant girls.<sup>20c</sup> Much the same statement has been made regarding waitresses.<sup>20d</sup> It is probable in these groups, however, that the relation of occupation to the delinquency is not causal so much as the occupation and the delinquency are like results of underlying conditions.

Certain writers have a tendency to confuse the relation of some occupations to crime, for instance, street trades and domestic service, by citing the high percentage of offenders which come from these groups. This is not a fair comparison be-

<sup>20a</sup> Ruth McIntyre, "Child Labor and Juv. Del.," *Jour. Del.* May 1918.

<sup>20b</sup> L. deK. Bowen, *Safeguards for City Youth, at work and at play*, p. 218.

<sup>20c</sup> W. I. Thomas, *The Unadjusted Girl*, p. 118.

<sup>20d</sup> F. Donovan, *The Woman Who Waits*.

cause the criminal hazards of an occupation are able to be determined only by comparing the criminals in these occupations with the total number of persons engaged in them. Where this number is not known we have no way of estimating the relationship.

## VI. FORMS OF INDUSTRY

Considerable attention has been given to the relation of economic organization to the criminality of a given country. If the conclusions reached in the preceding paragraphs are correct, we should expect a country with a predominance of extractive industry and a population mainly rural to show a lower criminality than a highly industrialized state with a population predominantly urban. A country which is in process of transition from extractive to manufacturing industry, therefore, should show an increasing criminality. It is doubtful if this is the case. Tarde was inclined to think that it was the disturbance due to the transition from one prevailing mode of subsistence to another rather than the character of the occupation which registered in increasing criminality.<sup>21</sup> Parmelee is inclined to believe that a capitalistic economic organization of society affects crime indirectly, through the creation of certain economic and living conditions and through the waste of social energy and material resources incident to the process.<sup>22</sup> In any economic organization of society, the population will be found to be distributed pretty generally in social status and occupation on the basis of physical and mental power. As transition occurs, the ineffective members of the society may be expected to fare badly in the process.<sup>23</sup> As Parmelee points out, the situation may be aggravated by a faulty organization of industry and an individualistic exploitation of natural re-

<sup>21</sup> G. Tarde, *La criminalité et les phénomènes économiques*, in *Arch. d'anth. crim.* vol. XVI, 1901, p. 568.

<sup>22</sup> M. Parmelee, *Poverty and Social Progress*, pp. 358, 359.

<sup>23</sup> P. A. Parsons, *Introduction to Modern Social Problems*, pp. 122, 123, and chap. IX.



sources. Cities and manufacturing communities do not create much that is new in human wretchedness. Only the form of expression changes. Poverty, wretchedness and squalor could not be worse than it was in the old commercial towns and in decadent rural communities.<sup>24</sup> These characterize the haunts of criminals and, to a certain extent, the environments which produce them.

## VII. POVERTY AND CRIME

Much that has already been said in preceding pages is *apropos* to the discussion of the relation between poverty and crime. While it is practically impossible to isolate poverty from other causal conditions, there is an abundance of material to show the important part which it plays, especially in the production of juvenile delinquency.

Bailey's study of juvenile delinquents in Connecticut found one-fourth of the families of delinquents registered with relief societies. In 58 per cent of these families the poverty was attributed to misconduct of parents as over against only 41 per cent of all families so recorded.<sup>25</sup> This indicates a vicious circle,—misconduct of parents producing poverty in the family, poverty in the family inducing delinquency in the children. This situation also suggests how many other factors might have been present, such as heredity, family and neighborhood life, etc.

Out of the first one thousand cases of juvenile delinquents studied by Healy in Chicago only eighty came from homes characterized by poverty. A second study of a similar group found 24 per cent of the families in poverty.<sup>26</sup> The following table is taken from Sutherland and is based on studies made in Chi-

<sup>24</sup> See R. L. Dugdale, *The Jukes*, E. H. Estabrook, *The Jukes in 1915*, and *The Nams*, H. H. Goddard, *The Kallikak Family*, and similar studies.

<sup>25</sup> W. B. Bailey, "Children before the Courts in Connecticut," United States Children's Bureau, *Pub. 43*, p. 80.

<sup>26</sup> W. Healy, A. Bronner, "Youthful Offenders" *Amer. Jour. Sociol.*, July 1916.



cago by Breckenbridge and Abbott of juvenile delinquents and a study of women delinquents in New York State by Fernald.<sup>27</sup>

*Ratings of Economic Conditions of Homes of Juvenile Delinquents in Chicago and Women Delinquents in New York State.*

Home Conditions	Chicago (741 cases)	New York State (420 cases)
Very poor .....	44.7	41.4
Poor .....	34.3	45.0
Fair .....	18.3	13.1
Good .....	1.6	0.5

These studies significantly found that not a single case came from a home which could be called very good.

The true relation of poverty to crime is admirably pictured in the following passage from Sutherland:

“Without comparable statistics for the general population it is not possible to determine how important poverty is. And even if such statistics were available it would not isolate economic conditions from drunkenness, feeble-mindedness, and other things that might be the cause of both poverty and delinquency. Without being able to determine accurately the importance of this factor, therefore, it is possible to consider the ways in which poverty tends to produce delinquency. Poverty in the modern city generally means segregation in low rent sections, where people are isolated from many of the cultural influences and forced into contact with many of the degrading influences. Poverty generally means a low status, with little to lose, little to respect, little to be proud of, little to sustain efforts to improve. It generally means bad housing conditions, lack of sanitation in the vicinity, and lack of attractive community institutions. It generally means both parents away from home for long hours with the fatigue, lack of control of children, and irritation that go with these. It generally means withdrawal of the child from school at an early age and the be-

<sup>27</sup> E. H. Sutherland, *Criminology*, p. 168. Breckenridge and Abbott, *The Delinquent Child and the Home*, pp. 70-72, and M. Fernald et al., *A Study of Women Del. in N. Y. State*.

ginning of mechanical labor with weakening of the home control, the development of anti-social grudges, and a lack of cultural contacts. Poverty, together with the display of wealth in shop windows, streets, and picture shows, generally means envy and hatred of the rich and the feeling of missing much in life because of the lack of satisfactions of the fundamental wishes. Poverty seldom forces people to steal or to become prostitutes in order to escape starvation. It produces its effects most frequently on the attitudes rather than on the organism. But it is surprising how many poor people are not made delinquents rather than how many are made delinquents.”<sup>28</sup>

### VIII. EDUCATION AND CRIME

The relation of education to criminality is a moot question. Very little can be said of it with certainty. Efforts have been made to show that lack of it has been responsible for much delinquency. None of these is conclusive. The United States Census for 1910 shows that 12.8 per cent of the prisoners were illiterate as contrasted with 8.2 per cent of the total population over fourteen years of age. This difference is not great enough to be important, and the figures are not accurate because of lack of uniform standards of literacy in different parts of the country and because the condition of a considerable percentage of the prisoners was not learned.

Furthermore, Sutherland cites statistics from several local studies which indicate that illiteracy among prisoners is rapidly decreasing and in some communities literacy is higher among prisoners than it is among the general population.<sup>29</sup> In some states the decrease in illiteracy is more rapid among prisoners than it is elsewhere. In 1910 the percentage of literacy among negro prisoners was greater than for the general negro population, due, perhaps to the predominance in penal institutions

<sup>28</sup> *Op. cit.*, pp. 169, 170.

<sup>29</sup> *Ibid.*, p. 171.



of individuals from cities where literacy among negroes is higher than it is among the rural negro populations in southern states.

As to the affects of higher education, Murchison's efforts to show that "college men" are represented in prison populations in much greater numbers than their proportion to the general population are not conclusive.<sup>30</sup> His figures are based upon the statements of the prisoner, and Fernald has demonstrated that such data are unreliable. In her study of women prisoners in New York State she reported that an occasional woman claimed to have a college education but in every case investigation proved this to be untrue. None of her five hundred cases had entered college. The Commission on Woman and Child Wage-earners studied 3229 delinquent women, not one of whom was found with college education.<sup>31</sup> No such studies have been made of men prisoners, and Sutherland asserts that such statistics as are available from various state institutions are thoroughly unreliable.<sup>32</sup> He points out that such statistics would be of little value even if they were reliable because we have no knowledge of the percentage of college men in the general population.

While there is no evidence that our system of education has increased crime, neither is there evidence that it has decreased it. Perhaps this is as severe an indictment as we could bring against our educational methods. On the other hand, only a part of education is at present secured from the public schools. That part of it which would most affect crime has been given in the home and in connection with religious institutions in the past. The failure of these to provide their share of the education of the young should not be blamed upon the school system. To be sure, it is not adapting itself to this deficiency in the general process of education as rapidly as we might desire, but this deficiency may be due to the many difficulties

<sup>30</sup> C. Murchison, "College Men Behind Prison Walls," *School and Society*, June 4, 1921.

<sup>31</sup> Vol. 15 of the report, *Relation Between Occupation and Criminality of Women*, p. 23.

<sup>32</sup> E. H. Sutherland, *Criminology*, pp. 172, 173.



inherent in the situation, such as overcrowding, lack of individualization, lack of point of view and lack of facilities. These will have to be remedied to a certain extent at least before we can expect any considerable addition of moral, ethical, or social education from our sorely burdened educational system. Due to certain ideas which have predominated at different times in our educational history we have only just sensed the need of education for social life.<sup>33</sup>

Healy and others have called attention to the frequency with which the criminal career begins with truancy. Every juvenile probation officer can give significant testimony on this point. The causes of truancy, however, are so numerous in the school and without, that the better term for this aspect of causation is individual mal-adjustment in which the educational situation may be only an incident. In a similar manner retardation bears a relation to crime which is to a considerable extent independent of education as such. Lack of an opportunity to complete an adequate education as a cause of crime is also incapable of being isolated from numerous factors among which education itself is little more than an incident. The schools cannot be blamed for their lack of an opportunity to complete their work.

## IX. THE HOME IN RELATION TO CRIME

We have heard much of the plight of the home in recent years. At the door of this sadly harassed institution we are laying the blame for much that is wrong in our civilization. In spite, however, of much that has been said and written, there is little direct evidence to show the relation of the home to crime. We know that it is an important factor; but just how important a factor it is we do not know. On the other hand, we need to

<sup>33</sup> See M. Parmelee, *Criminology*, pp. 220, 226, E. H. Sutherland, *Criminology*, p. 173, and P. A. Parsons, *Introduction to Modern Social Problems*, pp. 210-218.

know just what type of homes produce delinquency, or in what ways they produce it.

While we have seen a relation between poverty and crime in that the majority of criminals come from homes that are poor or extremely poor, we know that poverty alone is rarely a cause of crime. The experience of the race has shown that homes in which there is an ideal spiritual relationship have been able to produce a uniformly high type of character even though characterized by extreme poverty.

Efforts which have been made to determine the "goodness" of the homes from which delinquents have come, such as the studies made in connection with the Whittier State School in California, are of little value for the reason that there is no certain check on the spiritual conditions in the home, and they cannot take into consideration the fact that what may be an ideal home for one child may be a bad one for another.<sup>34</sup> On the other hand, a home which may be considered good at one time may be bad at another by reason of the development of spiritual situations and relationships from within or injected from without. Miss Fernald's efforts to rate homes of delinquents in New York State as "very poor," "poor," "fair," "good" and "very good," while showing from forty to sixty per cent from poor or very poor homes and from about thirty-one to forty-seven per cent from homes that were only fair, about six per cent from good homes and practically none from homes which could be considered very good, is vitiated to an extent by the difficulties inherent in subjective ratings.<sup>35</sup>

Healy attempted to get a check on home influence by comparing the proportion of children from a particular home or series of homes who are delinquent with those children in the same homes who are not delinquent.<sup>36</sup> He studied the cases of one thousand recidivists in Chicago. These had 2923

<sup>34</sup> J. H. Williams, "The Whittier Scale for Grading Homes," *Journal of Delinquency*, November 1916.

<sup>35</sup> M. R. Fernald et al., *A Study of Women; Delinquents in New York States*, p. 216.

<sup>36</sup> W. Healy, *The Individual Delinquent*, p. 148.



brothers and sisters. Of this number 383 were delinquent by court records; the character of 117 was not learned; and 2423 were not delinquent. In 119 of these families there was only one child, the "defendant." There were only 48 families out of the total of 764 with more than one child in each, in which all the children were delinquent. Similar studies made later in Boston by Dr. Healy revealed about the same conditions. This would seem to indicate that homes which are so bad as to induce delinquency in all of the children are not numerous. Where one child is delinquent with one or more brothers and sisters who are not, we have the obvious intrusion of conditions which may not be said to be characteristic of the home as a whole.<sup>37</sup>

In an effort to evaluate the home influence in a consideration of all other factors, Healy found that home conditions were the major factor in delinquency in 19 per cent of the cases studied in Chicago and a minor factor in 23 per cent.<sup>38</sup> This method is safer than that of attempting to rate the homes since it allows for taking all of the factors into consideration of each case. For instance, a home that would be rated as "good" by standardized criteria may be instrumental in producing delinquency in a boy who is not adapted to the home. There are many types of such lack of adaptation. A simple but frequent illustration is that of the over-grown boy in a "good" home, who is irritated by the attempts of his parents to exercise the same control over him that they would exercise over other boys of the same age but much smaller size. The result is that such boys are often delinquent in the home and entirely law-abiding when they get away from home.<sup>39</sup>

Sutherland comments on the influence of the home as follows: "No individual is at birth so set toward delinquency that he must inevitably be a criminal. The child is so plastic

<sup>37</sup> W. Healy, *The Individual Delinquent*, p. 148.

<sup>38</sup> *Ibid.*, pp. 130, 131 and 134.

<sup>39</sup> W. Healy and A. Bronner, "Youthful Offenders," *Amer. Jour. of Sociol.*, July 1916.



that a supremely efficient home and community could keep him from delinquency. On the other hand no child, by nature, has such a law-abiding tendency that he could not possibly be made a criminal in a supremely bad home. But as a matter of fact few homes are found at the lower extreme and perhaps none at the upper. There is no science that parents can use in producing the desired traits in their children. A vast amount of experimentation and trial and error goes on, with a great deal of support or opposition from other institutions. The home of the immigrant served very well in the old country where it was supported by the rest of the community, but torn from its setting and transplanted to the United States it may fail dismally. It is impossible, therefore, to isolate the home as a factor, either from the constitutional equipment of the child or from other institutions of the community. What is customarily done is to set a 'normal' standard of efficiency for the homes and when a delinquent comes from a home ranked below normal, the investigator reports that the bad home conditions were the cause of delinquency; when a delinquent comes from a home ranked above normal, the investigator looks elsewhere for some other abnormal condition or traits as the explanation. This is undoubtedly due to the fact that responsibility, with its ethical implications, is attached to the notion of causation."<sup>40</sup>

Miss Claghorn<sup>41</sup> in her study of rural delinquents in New York State reveals something of the extent to which delinquency, viciousness, and the depraved character of parents figure in the home situation. She studied 185 delinquent children in 144 different families. Of these homes she says as follows:

"Of the men 43 were noted as addicted to drink; 21 implicated in some sort of sex irregularity,—such as living in irregular relations with a woman, abusing his own daughter, keeping an immoral resort, or performing illegal operations; 10 were of noticeably low mentality; 8 were described as 'ignorant';

<sup>40</sup> E. H. Sutherland, *Criminology*, pp. 139, 140.

<sup>41</sup> Kate H. Claghorn, "Juvenile Delinquency in Rural New York," *United States Children's Bureau, Pub. 32*, pp. 22, 23.

8 had a record of stealing or fraud of some kind; 7 were shiftless and inefficient; 6 were cruel. Of the women, 31 were sexually immoral; 13 were ignorant; 8 were of low mentality; 12 were shiftless and inefficient; 3 were unable to make a comfortable home because they 'hated housework' though they enjoyed outdoor work on the farm; 3 were addicted to drink; 2 had a record of stealing; 1 begged; and 1 was epileptic.

"In every case in which there was a record of parental stealing or fraud there was also a case of juvenile stealing. . . . On the other hand, considerably over half the parents or guardians with a record of sex irregularity were found in the group of families . . . where the most important recorded juvenile delinquency was a sex offense."

In the case of broken homes, delinquency in homes disrupted by divorce appears to be greater than those disrupted by death of one parent. Studies which have compared home conditions of delinquents with those of non-delinquents indicate that in homes where delinquency occurs the absence of one parent is from two to three times as frequent as in homes of non-delinquent children. Bonser made a study of 235 boys and 232 girls in the elementary schools in Cleveland in comparison with 200 delinquent boys and 78 delinquent girls; he found that the father was dead in the cases of 20 per cent of the delinquent boys, 63 per cent of the delinquent girls, 6 per cent of school boys and 5 per cent of school girls.<sup>42</sup> It has been estimated that 25 per cent of all children in the United States live in homes broken by death, desertion, separation or divorce, but the studies of various groups of delinquents show that from 40 to 70 per cent of them come from such broken homes.<sup>43</sup>

Bonser's study would indicate that the death of the breadwinner affected conduct of girls more than boys. Breckenridge and Abbott have also concluded that the loss of the father

<sup>42</sup> F. G. Bonser, "School Work and Spare Time," *Cleveland Recreation Survey*, vol. II, pp. 32, 33.

<sup>43</sup> E. H. Schiedeler, "Family Disintegration and the Delinquent Boy in the United States," *Jour. Crim. Law*, Jan. 1918.



is more serious than the loss of the mother; Schiedeler has reached the opposite conclusion.<sup>44</sup> Sutherland is inclined to accept the judgment of the latter.<sup>45</sup> Studies in Chicago and St. Louis bear out Bonser's figures in finding the broken home more conducive to delinquency in girls than in boys.<sup>46</sup>

While little or no statistical data is available on the relation of the immigrant home to delinquency, it is apparent that conditions develop in such homes which are conducive to misconduct in children born of immigrants. The younger generation of aliens takes more readily to new conditions of life than does the old. Quickly sophisticated, the youth revolt against parental authority and soon come to look upon the ideas as well as the manners of their parents as old-fashioned. Three definite results are apt to follow. Disrespect for parental authority expands into disrespect for all authority, and in the absence of traditional causes for social grouping, the gang habit develops. The fruit of the gang is often lawlessness, and the gunmen, with whom we are only too familiar, are frequently graduates of the gang.<sup>47</sup> Lack of parental control is probably an outstanding cause of delinquency in immigrant homes. This is often further complicated by vicious conditions in the neighborhood.

Institutional life of certain types has shown itself incapable of reproducing normal home training. Out of 500 delinquent girls in Waverly House in New York City, Miss Bingham found 240, or nearly half, who had had previous institutional experience. Of these 100 had been in orphanages or other child-caring institutions for periods of from one to twelve years.<sup>48</sup> Just what there is about institutional life which produces a high percentage of delinquents among inmates is not well understood. Attendants probably rarely reproduce the

<sup>44</sup> *Ibid.*, p. 723.

<sup>45</sup> E. H. Sutherland, *Criminology*, p. 144.

<sup>46</sup> E. H. Sutherland, *Criminology*, p. 144.

<sup>47</sup> P. A. Parsons, *Introduction to Modern Social Problems*, p. 160.

<sup>48</sup> Anne T. Bingham, "Determinants of Sex Delinquency in Adolescent Girls," *Jour. Crim. Law.*, Feb. 1923.



intimate relations with their charges which are common to parents and their children. The group is probably too large to develop that sense of belonging and solidarity which a child feels in an intimate family circle. Communication spreads evil group-excitement.<sup>49</sup>

#### X. THE ANTI-SOCIAL INFLUENCE OF BAD NEIGHBORHOODS

The second of the primary groups which are so important on account of their influence upon the individual is the neighborhood. In early society and in civilization until we reach a relatively high and artificial stage of culture, the conduct of the individual was developed and controlled to a great extent by that relatively small group of persons who lived adjacent to each other. The normal individual could not long face the disapproval of his intimate associates. Normal neighborhoods were composed of individuals who were associated with each other for the greater part of a lifetime.

The shifts in population which characterize American social life have thrown great aggregations of people together in highly artificial and heterogeneous groups. In the place of the simpler associations with their beneficial controls over the conduct of the individual there develop neighborhoods where these beneficial influences are not only not present but where they are supplanted by conditions which are actually vicious. These conditions are usually determined by the presence of certain characteristics which make the territory undesirable for residence purposes. In consequence, rentals are low and living conditions are bad. Into these areas gravitates a population which is marked by low efficiency, or low vitality, or mentality, or personality. In many there is a combination of two or more of these. Also, many apparently normal persons are forced by poverty or low standards of living or the ignorance characteristic of aliens to occupy these regions. In the absence

<sup>49</sup> A. S. Guilbord, "The Handicap of the Delinquent Child," *Survey*, Aug. 16, 1920.

of normal associations and wholesome and healthful recreations, all sorts of vicious conditions and practices develop. These districts become the haunts of prostitutes, gamblers, criminals and degenerates. Few homes in such neighborhoods could be considered normal or good. To the wretched conditions here described must be added a high percentage of irregularity in family life. Home ownership rarely exists. Cheap lodging places and makeshifts for living quarters abound. The population is shifting and irresponsible. Provisions for public and social service are usually inadequate, and protection for life and property is not infrequently threatened by vicious political or even criminal gangs.

Spot maps made to locate the point of occurrence of law violation indicate these communities with unerring accuracy. Similar maps indicating the location of cases of relief societies usually present an identical contour.

From these most vicious and degraded neighborhoods we pass through varying degrees of undesirability until we have districts which are undeniably bad but in which it is in some instances difficult to account for their badness. With most of the familiar conditions of bad neighborhoods absent the lingering cause of viciousness may be the people or it may be a tradition.<sup>50</sup> It may be the mobility of population which prevents the development of neighborhood standards.<sup>51</sup> Or it may be the absence of adequate facilities for recreation and diversion. The districts in which parks and playgrounds are located are usually lacking in delinquency.<sup>52</sup> Burgess found neighborhoods in small towns in which delinquency was eight times as prevalent as in any other ward.<sup>53</sup> Vicious neighborhoods flourish in the open country in some states.<sup>54</sup>

<sup>50</sup> P. Goldmark, *West Side Studies: Boyhood and Lawlessness*, pp. 15, 19.

<sup>51</sup> E. H. Sutherland, *Criminology*, p. 152.

<sup>52</sup> Breckenridge and Abbott, *The Del. Child and the Home*, map.

<sup>53</sup> E. W. Burgess, "Juvenile Delinquency in a Small City," *Jour. Crim. Law*, Jan. 1916.

<sup>54</sup> U. S. Children's Bureau, Pub. 32. Also R. L. Dugdale, *The Jukes*.



In the absence of all other indications of viciousness, an epidemic of delinquency or immorality may develop in a neighborhood as a result of the influence of a single individual who develops criminal tendencies or through the arrival in the community of an immoral or criminal character from without. Vicious associations may vary all the way from a chance contact with such characters to conditions in neighborhoods where the young are thrown constantly into companionship with questionable associates.<sup>55</sup> Various studies reveal the fact that in groups of juvenile offenders "bad companions" figure in from thirty to sixty per cent of the cases.

Much has been said and written about criminal gangs.<sup>56</sup> These may vary all the way from loose associations of boys without organization, with only a tendency to crimes of a petty character, to powerful and highly organized bodies with long records of serious crimes, which may control local government and politics and terrorize districts for years. These are not infrequently under the protection of the police and may even greatly affect the administration of criminal justice.<sup>57</sup>

It is a moot question whether lawlessness creates the gang or whether the gang creates lawlessness. Either may be the case in given instances and both may be true at the same time. Gangs may develop in almost any neighborhood, and they seem to arise out of very natural tendencies of adolescence when youth is not given sufficient opportunity for the exercise of its energies and inclinations. Most delinquencies are committed by groups of offenders, few by individuals singly.<sup>58</sup>

Neighborhood institutions of good and bad sort may contribute to delinquency in an undesirable community. This is obvious with regard to houses of prostitution, gambling places,

<sup>55</sup> E. H. Sutherland, *Criminology*, p. 153. Also R. A. Woods, *The City Wilderness*, pp. 148-165, and Healy and Bronner, "Youthful Offenders," *Amer. Jour. Sociol.*, July 1916.

<sup>56</sup> E. H. Sutherland, *op. cit.*, pp. 154-157.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*



pool rooms, and places of questionable entertainment and recreation in more vicious neighborhoods. But also the high grade family moving-picture theatre or other places of attraction to youth may create delinquency by the development of begging and petty thievery in poor children who adopt such means of securing the price of admission.

## XI. CRIME IN COUNTRY AND CITY

A generation ago works on crime gave considerable attention to the differences in the amount and character of crime in rural and urban communities.<sup>59</sup> Parmelee devotes a chapter to consideration of this subject without citing any new material.<sup>60</sup> A predominance of crime in cities is to be expected for a number of reasons. The city offers a congenial environment for criminals and degenerates and for those institutions which thrive in a dense population and in a vicious neighborhood. There is a greater concentration of poverty in cities as well as a preponderance of wage-earners without reserves of property. The struggle for existence is keener and the exactions of economic necessity are greater. In rural communities persons of low efficiency can hang on better because of the considerable amount of primary resources which may be had without the outlay of cash. In cities, rent and the grocer must be paid if the family is to be sheltered and fed. There are greater and more numerous opportunities for parasitism,—for living off each other by questionable and actually illegal means, such as peddling, semi-commercial begging, gambling, prostitution and related industries, such as procuring and immoral places of amusement, lotteries and illicit sale of narcotics and intoxicants. Cities contribute the maximum of juvenile delinquency because of the conditions described in the discussion of neigh-

<sup>59</sup> C. Lombroso, *Crime, Its Causes and Remedies*; G. Aschaffenburg, *Crime and Its Repression*; Mayo-Smith, *Statistics and Sociology*, and E. Ferri, *Criminal Sociology*.

<sup>60</sup> M. Parmelee, *Criminology*, chap. V.

borhood influences. The highly artificial conditions of life in cities produce many hazards for the young.

While efforts which have been made to compare rural with urban crime are not satisfactory or conclusive in point of number and extent or territory covered, it appears that we may safely make the following deductions regarding crime in town and country:<sup>61</sup>

1. Taken as whole, crime is more prevalent in cities than it is in rural communities.

2. The kinds of crime which are most prevalent in cities are those which are characteristic of more dense populations.

3. In the more serious crimes, such as murder, manslaughter, etc., the rate for farmers is about in proportion to their numbers in the general population.

4. While the percentage of criminality involving commitment to penal institutions rises steadily in towns with the increase in numbers, the highest rate seems to be in towns of from 2000 to 4000 population.

Sutherland comes to the conclusion that "crime increases with the density of population, but the major crimes increase less than the minor crimes. It may be, also, that small towns have a higher proportion of delinquency than either the open country or the large cities, though this is not certain.

"If it is admitted that there are more arrests or convictions in the cities, this may be due either to a selective migration from the country of those most apt to commit crime, to the influence of the city, to the fact that there are more laws in cities to be violated, or to the greater probability of getting caught."<sup>62</sup>

<sup>61</sup> E. H. Sutherland, *Criminology*, pp. 93-97. L. H. Mounts, *Dependents, Defectives and Delinquents in Iowa*, pp. 24, 39, 40. J. H. Williams, "Delinquency and Density of Population," *Jour. Delinquency*, March 1917. Grace M. Fernald, "Psychological Work with Girls," *Jour. Delinq.*, March 1916. Canada, Dominion Bureau of Statistics, *Criminal Statistics*, 1921, pp. ix. and 131-141. U. S. Bureau of the Census, *Prisoners and Juv. Del. in U. S.*, 1910, p. 151.

<sup>62</sup> E. H. Sutherland, *Criminology*, p. 96.



## XII. DRINK AND DRUG HABITS AND CRIME

Probably on no other point has there been so much discussion or so fruitless discussion as on that of the relation of alcohol to crime. Here, as in the case of poverty, it is difficult to isolate this from other causes. It is significant that Healy did not find alcohol to be the main cause of the delinquency in any one of his first thousand cases studied in Chicago, although it was a minor cause in a small number of cases.<sup>63</sup> Alcoholism of parents, however, was found to be a much more important factor in all three of his series of cases studied. In the two series of cases studied in Chicago, one or both parents drank to excess in 31 per cent of the first series and 26.5 per cent in the second. In the Boston series one or both parents drank to excess in over fifty per cent of the cases studied.<sup>64</sup> It is safe to conclude that this alcoholism was accompanied by a considerable amount of poverty, bad home conditions, vicious environment and other conditions making for delinquency. In spite of the difficulty of isolating alcohol as a cause of crime from a number of other causes, there seems to be reason to believe that the complete elimination of it from our social system would reduce crime to a marked extent. Healy and Aschaffenburg agree in the view that this reduction would amount to one-fifth of the present volume of crime.<sup>65</sup>

It has been claimed that alcohol may affect the germplasm, that its use by the mother during the period of pregnancy may injure the offspring, and that drinking by children may produce some effect on their physical and mental constitutions, but arguments and experiments bearing upon these propositions are not yet conclusive. On the other hand, it is obvious that "the most important relation between alcohol and crimes is economic and social rather than physiological. The most important effect

<sup>63</sup> W. Healy, *The Individual Delinquent*, p. 138.

<sup>64</sup> Judge Baker Foundation, *Case Studies*, Series I, Nos. 2-3, p. 5a.

<sup>65</sup> E. H. Sutherland, *Criminology*, pp. 175, 176.



of the alcohol is not on the individual himself, but on the family and especially on the children, especially when poverty is an accompaniment or result of the alcoholism. The status of the alcoholic person is lowered; others respect him less; he has less self-respect and has less to lose by other conduct difficulties, such as crime. Alcohol is frequently a means of screwing up the courage to commit deeds of violence. It is also destructive of economic efficiency and thus tends to turn the one who drinks excessively into a vagrant and disorderly person. Because of the lack of control which comes with excessive drinking, modification of behavior is rendered difficult. . . . Moreover, there is a distinct relation between alcohol and respect for law. Before prohibition the saloons openly violated the law and corrupted legislatures, police departments and courts. Since prohibition some of the most respected members of American society and some influential newspapers are openly violating and scoffing at the law and bootleggers are producing corruption as did the saloons of the earlier period. Whether respect for law is greater under prohibition or under the saloon system cannot be determined, but in both systems the respect for law has been distinctly affected by the practices connected with alcohol.”<sup>66</sup>

Drink and drug habits have long been associated as causative factors in connection with crime. Persons who are alarmed over the apparent increase of the latter are inclined to attribute that increase to prohibition, which has been thought to cause drunkards to adopt the drug habit in the absence of drink. In view of the great cost of securing habit-forming drugs, it seems doubtful if the increasing difficulty of securing a supply of stimulants would lead one to acquire a habit, the satisfaction of which is fraught with still greater difficulty.

In the case of the habit-forming drugs, their effects upon the user are a more rapid and immediate deterioration in many cases and a consequent closer connection with criminal acts. Users of the more expensive drugs suffer horribly unless pro-

<sup>66</sup> *Ibid.*, pp. 176, 177.

vided with a daily supply and in consequence they take to crime readily in order to provide the means of satisfying their cravings. Since the supply is mainly contraband, they are obliged to deal and often to associate with low characters in order to secure it.

Drugs which produce a sense of elation and power or importance are commonly, like alcohol, used by criminals to nerve themselves for the performance of desperate crimes. Such evidence as is available tends to show that while a criminal career often leads to the use of drugs, drug habits more frequently lead to the adoption of criminal practices. A study of morphine addicts in the Municipal Court of Boston included 60 persons. Of this number 42 had never been arrested before the drug habit was formed. When studied, each had an average of 8.2 arrests. The other 18 had averaged 2.8 arrests before acquiring the drug habit and 8.3 afterward.<sup>67</sup>

Jane Addams cites the case of a gang of boys in Chicago between the ages of 12 and 17 who became addicted to cocaine secured from a colored "dope peddler" who acted as agent for a drug store. They had become confirmed addicts in six months, and had stopped school and work. Funds for securing their supply of cocaine were secured by stealing from their parents, stealing junk, pawning clothes and shoes, and other ways. Their nightly supply of the drug sometimes cost as high as eight dollars.<sup>68</sup>

### XIII. MAL-ADJUSTED INDIVIDUALS

The following case cited by Sutherland shows how crime may be committed by an individual who has failed to find a congenial place for himself in a normal community.

"I grew up in a small town. Among the boys with whom I associated there were very distinct groups. The difference in

<sup>67</sup> C. E. Zandos, "Report on Morphism in the Municipal Court of Boston," *Jour. Crim. Law*, May 1922.

<sup>68</sup> Jane Addams, *The Spirit of Youth in the City Streets*, pp. 64-66.



the groups was largely a matter of age, athletic ability or general scholastic ability. There were always some boys who for some reason, either lack of athletic ability or being 'dumb' in school, could not become affiliated with any group. Practically every one of the boys who belonged to no group, who were ostracized, so to speak, were taken before the authorities for delinquencies before they were sixteen years of age. Later some of them committed more serious offenses."<sup>69</sup> Such a situation not infrequently occurs when children or young persons move into a neighborhood and fail to find congenial companions. This failure leads to frequenting of places of questionable amusement and the making of friendships with questionable characters. The feeling of isolation may lead to resentment and finally to an undifferentiated grudge against a neighborhood or society in general.

#### XIV. ACCIDENTAL OR INCIDENTAL CAUSES

Studies undertaken to discover the cause of crime in individual cases show how frequently the element of chance figures. A chance acquaintance leads to delinquency. A boy with delinquent tendencies moves into a neighborhood, starting a delinquent gang which disbands after his departure from the district.<sup>70</sup> A quiet, unassuming immigrant youth spends his leisure with his fellow workmen in a saloon whose proprietor has an understanding with his boss. He is threatened with the loss of his job if he does not spend more money for drink. Later, after a drunken debauch, he kills a fraudulent doctor who has practically robbed him of all his money while pretending to cure him of rupture.<sup>71</sup> The same youth in a different situation would, quite probably, have become a useful citizen.

Such illustrations might be cited almost indefinitely. They are familiar to all persons dealing with delinquents. Most in-

<sup>69</sup> Manuscript cited by Sutherland, *op. cit.*, p. 157.

<sup>70</sup> *Ibid.*, p. 155.

<sup>71</sup> E. H. Sutherland, *Criminology*, p. 119.



fluent citizens know of such cases in their own communities. Unfortunately, such delinquents are more apt to be harshly dealt with by the law than are more pathological or more hardened offenders because of the apparent absence of excuse for criminality. Citizens of smaller communities are apt, also, to take the enforcement of the law more seriously and to insist upon stricter justice than are groups more familiar with crime. The defalcation of trusted officials in business, industry or politics, though frequently arising from incidental or accidental causes, is apt to meet with punishment out of all proportion to the gravity of their offenses from the standpoint of social safety. This, also, is more apt to be true in small than in large communities.

This circumstantial character of a considerable amount of crime accounts for the presence in penal institutions of a great many persons who manifest no indications of pathology. Their presence in these institutions is chiefly responsible for the belief so frequently asserted in these days, that the criminal is no different from any other person. Some criminals are not different, they are victims of chance to a great extent.

## XV. DEFECTIVE SOCIAL MACHINERY

A survey of the physical and social environments would be incomplete did it not take into consideration the effects of our blundering methods of repression. There is practically a unanimous opinion of those who are in a position to judge that our penal machinery is one of the chief promoters of the very conditions it attempts to prevent or cure. Much of our stupid practice in dealing with first offenders tends to fix the criminal habit in many delinquents whose first offense might just as well be the last. For this situation society has only itself to blame. So far as the number of criminals who are not pathological is concerned, the adoption of a scientific program for the treatment of crime would eliminate one of the most influential factors making for criminality. The perpetuation of a stupid and

demoralizing system of repression and treatment of crime is as much of a blight upon our civilization as are city slums, vicious neighborhoods, and improper guardianship.

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## PART III

SOCIETY'S REACTION TO THE CRIMINAL





## XII

### TRADITIONAL PROCEDURE

#### I. CRIMINAL PROCEDURE AND CRIMINOLOGY

“Is the accused guilty or innocent?”

This has been one of the most perplexing problems which has confronted human society. The description of the many ways in which different groups have attempted to answer this question makes up one of the most interesting chapters in the history of the race. So many important things have been involved in it,—the protection of the group, the vengeance of the wronged, the menace of magic, the intervention of the supernatural, the wrath of the gods, punishment, justice and retribution. All these have blended at times with a vague antipathy to the person of the individual who in some mysterious fashion has by his acts set himself over against his fellows. We have not yet recovered from the primitive man's belief that the whole group is in danger of some sort of contamination from one who has thus demonstrated himself to be in a sense an outsider, an alien. By reason of all that may be involved, we have been loath to adjudge one a criminal without having taken what at any given time we have considered to be the necessary steps to make sure our judgment is correct. Hence the trial in its multitudinous forms, engaged in with impressive solemnity, from the crudest devices of primitive peoples to the elaborate but perhaps none the less crude processes of modern court procedure.

Those of us who are enamoured of democracy like to think of our simple and sincere ancestors assembled in the folk-mote

solemnly hearing all the facts in the case and arriving at a decision by popular vote. Perhaps this was done to some extent as Tacitus and other describers of primitive peoples have told us.<sup>1</sup> But we know, also, from equally trustworthy observers that less dignified and noble devices of a religious and magical character were commonly resorted to in order to determine the guilt or innocence of the accused,—devices which in most instances bore results having little relation to facts but which long satisfied the popular demand for an orderly procedure and a clear conscience.

## II. EARLY DEVICES FOR DETERMINING GUILT OR INNOCENCE

The Chinese are said to have had a custom of putting rice in the mouth of the accused. Fear may stop the flow of saliva. If the accused is innocent, the rice will come forth moist; if it comes forth dry, he is guilty.

We have no object in multiplying similar strange illustrations. We shall give some attention, however, to several practices of our ancestors which are no less strange,—not because of their strangeness, but because ideas involved in them have been perpetuated and are at present imbedded in legal and popular conceptions of trial by jury. These associations of ideas occurred so long ago that we have had time to develop a belief in the validity and reliability of the institution of the jury. As compared with other devices for determining guilt or innocence, however, the trial by jury is a relatively youthful institution. It finally took the place of practices which had preceded it by many centuries in Western Europe and which were derivatives of the primitive practices of our remote tribal ancestors.

During the greater part of the Middle Ages, trial by battle, the ordeal, and compurgation were the devices commonly used to try the accused. Trial by battle probably survived from

<sup>1</sup> Tacitus, *Germania*.



the vengeance of the injured or his relatives which in time was supervised by the group to prevent undue severity. Eventually certain magical and religious notions developed to the effect that in some manner the innocent would come safely through the trial by battle, protected either by charms or the Deity. These ideas are very old and have been common to many different peoples. Most great gods have been given the title of Defender at some time or other because of their defense of the innocent under similar circumstances. After the jury supplanted the trial by battle, it partook<sup>1</sup> of the nature of a contest and in the course of time the notion developed that it was the defense of the weak against the strong, the "bulwark of the people's liberty," which was supposed to be available to the humblest.

The ordeal was obviously a magical and religious test. It was carried out in many ways. Most of these involved some method of inflicting bodily harm. In case of innocence, either magic or religion, by charms or spirits, was supposed to enable the accused to come through unscathed. If he succumbed or suffered harm he was considered guilty. As common ordeals were plunging the naked arm or the whole body into boiling water or oil, walking upon red hot stones or pieces of metal, swallowing poisons, etc., it is needless to say that few accused persons were found to be innocent.

Compurgation was obviously a religious test. Groups of friends of the accused swore to his innocence and good character. Others swore adversely. It was believed that Divine wrath would be visited upon those who swore falsely. As such visitation seldom occurred, these events developed into swearing contests in which the decision was given to whichever group swore the more convincingly. Probably on account of the religious favor of the number twelve in Christian theology, this came to be the conventional number of compurgators. After compurgation was supplanted by the jury, this number was perpetuated and the swearing of jurors and witnesses was depended upon to elicit and arrive at the truth.

## III. ORIGIN OF JURIES

Strange as it may seem, the jury as it is now used, was not derived from either of these. Both the grand jury for bringing indictments and the petit jury for trying cases have their origin in political machinery which was devised during the period of the Roman Empire for fiscal purposes rather than juristic. It was part of the royal machinery for raising revenues and was borrowed by the Frankish kings and used as a means of determining royal rights and settling disputes which arose over royal or *fiscal* lands. The method employed when disputes arose was to summon a group of private citizens who went into conversations and discussions with the king's representatives. Such a hearing was called an *inquisitio*. In time the functions of this body were extended to include not only disputes but to determine the taxable wealth of the community, the state of the peace, and whether there were any offenses against the king and his law. The group of persons thus deliberating came to be known as a *jurata*, and their findings as reported to the king as a *verdictum*. These survive in the modern jury and its verdicts.<sup>2</sup>

The use of the *jurata* was brought to England by the Normans in 1066 where its use as a royal inquisition came to be known as an assize. A century later at the Assize of Clarendon in 1166 the grand jury was definitely organized. A number of representative citizens were summoned to tell whether they knew of any one accused of crime in the neighborhood. While the number of persons thus called together was quite large, at least twelve of them had to agree as to the accuracy of any given accusation in order to secure action on the case by the royal representatives. The number assembled finally came to be twelve and their unanimous agreement finally became the indictment. The work of this jury ended with the indictment. The accused was tried by the ordeal or the duel, although as

<sup>2</sup> H. E. Barnes, "Trial by Jury," *American Mercury*, Dec. 1924.



early as 1160 Henry II is said to have permitted accused persons to substitute for combat or the ordeal a sort of jury trial.

The use of the jury trial, however, did not become common for a half century after the Assize of Clarendon. In 1215, Pope Innocent II condemned the ordeal as a means of trial. This pronouncement of the Church gave a powerful impetus to the substitution for the ordeal of the jury trial which very definitely made its appearance in England by 1225. For a time there was some tendency to use the grand jury for a trial jury but the definite separation of the trial jury from the jury of accusation was finally accomplished. For a century or so it was possible for an accused person to decline a jury trial and submit to a trial by battle or torture. This choice was sometimes made because conviction by a jury entailed the confiscation of the property of the accused and the possible impoverishment of his dependents or relatives. In the course of time, trial by battle was outlawed but torture was not made illegal until the end of the Eighteenth Century.<sup>3</sup>

It is interesting to note that the Assize of Clarendon which definitely adopted the grand jury, also provided for the construction of pens or enclosures in which persons accused by the grand jury should be kept until their trial. These were the legal forerunners of the gaol or jail as it has come to be called. It bears somewhat the same relation to the prison as does the grand to the petit jury.

The development of the present trial jury represents an accumulation of ideas and practices. Inheriting the nature of a contest and the elements of compurgation in the swearing in of the jurors and the oath of the witnesses, it has added other practices to these, from time to time. Early jurors combined something of the character of witnesses with their powers of making decisions but gradually they became bodies for hearing witnesses and making decisions on the basis of the evidence submitted to them. As time went on more care was shown in the selection of jurors. Examinations for prejudice and biases

<sup>3</sup> H. E. Barnes, *op. cit.*



and the right of the state and of the accused to challenge jurors were added. At first only accusing witnesses were heard but gradually the practice arose of permitting the accused to summon witnesses in his defense. Bit by bit the rules of evidence were built up as to relevancy and irrelevancy, the manner of giving testimony, the cross-examination of witnesses, the pleas of the defense and prosecution, and the charge of the judge to the jurors. In time, all of these became encrusted in the rigidity of the "cake of custom" until at present the objective is not infrequently lost sight of in the observation of regulations, and justice is often fouled in the cogs of its own machinery. By reason of their very age, these accretions come to have fictitious values which are thought of as a part of the fundamental nature of the institution itself.

#### IV. NOTIONS ABOUT THE JURY

So accustomed have English-speaking peoples become to the jury that we have come to think of it as one of the God-given rights of man. We have much the same attitude toward it which the ancient Jews had toward their popular courts of justice, the deprivation of which was one of their chief grievances against the feudal classes. This sanctity of the jury comes partly from its age and partly from certain of the sacred notions which it inherited from its predecessors. Some of the glamour comes from the fact that it has been looked upon as the defense of the weak against the strong, of the poor against the rich, as the palladium of the common people. That it was far from this as a device for serving the ends of a privileged class we have already seen. That it is often the tool of a class or interest we shall soon see.

Another reason for the popular reverence for the jury may be found in its association with the general notion of justice. Truth could be learned, innocence vindicated, and the guilty detected by this simple popular device. Submit all of the facts to twelve "good men and true," selected from the rank and file,

whose deliberations are pious and accompanied by prayer for Divine guidance, and in some mysterious manner justice will be achieved. From this conviction the common citizen got a certain sense of security which he associated with Divine providence. Behind this screen of sentiment of the common people and the slavery to tradition of the rank and file of the legal profession the increasing inefficiency and outright stupidity of the jury trial escaped detection. It has even come to be one of the chief obstacles in the way of achieving the very thing for which it was designed. The reasons for this unfortunate transition are worthy of consideration. But first let us consider the factors which gave it its long life and vigor.

#### V. POSSIBLE VALUES OF THE JURY

It is doubtful if a practice could capture the imagination of a great people and weave itself into their most important social machinery, to survive there safely entrenched for nearly fourteen hundred years, if it did not have some practical values. In the case of the jury, some of these values are not hard to detect in the early stages of its development.

Certain elements of the class conflict appear at the beginning of this development. The notion of a "jury of peers" held out the promise that a man might stand a better chance with his case submitted to a group of men of his own class and station than if it were presented to a group whose interest might conflict with his own. If the group were small and all the persons involved were lifelong associates, there was a fair prospect of justice being done within certain limits set by ignorance and superstition.

In addition to this element of trusting a man's destiny to a group of his equals was the idea that this was a democratic procedure. There was the feeling that the people were participating in the conduct of their own affairs,—a feeling which gave them a sense of dignity and worth and which, to a certain extent, enabled them to develop a closer acquaintance with their



social machinery and to understand the nature and processes of their laws. In a democracy this is tremendously important.

It was thought, and is still thought by a great many persons, that judges are apt to develop a class consciousness and to share the interests of a privileged group.<sup>4</sup> The jury was thought and is still thought to retain for the people a hold upon legal machinery and processes. Until we become intelligent enough to entrust such tremendously important matters as criminal and civil justice to technically trained persons, this view will probably act as a stubborn barrier in the way of the adoption of a more efficient method of determining guilt or innocence.

It was further believed that a jury of twelve men selected from among the people was proof against corruption. One man might be corrupted by bribery or betray justice in the hope of currying favor with some person or class, but in a group of twelve, a sufficient number would be honest to place their deliberations above venality. On the whole the confidence of the masses in the honesty of juries has not been misplaced. Dishonesty is not among the indictments of the jury even today. To be sure, juries have lent themselves as willing tools of classes, of groups and even of interests. This, however, has not been characteristic of the jury as an institution.

As we have seen, one of the dominating ideas about the jury was that of a trial by the peers of the accused. In time this idea came to be largely a fiction. The breaking up of community life and the throwing of all sorts and classes of people together in modern city life has made it exceptional outside of small communities for a man to be tried by a jury of his associates. In consequence the belief in the efficiency of a jury of equals or associates has gradually been supplanted by the idea that twelve men can be picked at random from the rank and file who are capable of judging between error and truth. This

<sup>4</sup> E. H. Sutherland, *Criminology*, p. 276. Also M. Parmelee, *Criminology*, pp. 326, 327.



is thought to be the application of common sense—which term has served as one of the shibboleths of democracy.

As the basis of the jury is shifted from that of a group of equals to that of common sense, it becomes evident that a group capable of distinguishing between truth and error can be brought together only under rare circumstances. What is usually the case is a panel of individuals as widely diverse as it is possible for twelve persons to be, with each probably holding different ideas of truth and error.

## VI. CHARACTERISTICS OF THE AVERAGE JURY

1. *Selection of the panel.* The common method of selecting the prospective jurors in American courts starts the entire process by a selection which eliminates most of the material well qualified by nature for the performance of the task. A group of officials fairly well acquainted with the population weeds out most of those persons of the professional classes, business men and manufacturers whose professional and business interests would be interfered with by the confinements of jury duty. By this one stroke the more intelligent members of the community are eliminated from consideration. Not infrequently the panel comes to be composed of persons who do jury duty from year to year. In fact, this type of panel is commonly preferred by attorneys because they make jury material which is more easy to handle than that of a higher order of intelligence. This selection of the panel, however, is only the beginning of the weeding-out process. Let us assume that it is composed of farmers, small tradesmen, a few business and professional men and a majority of laborers, skilled and unskilled, including barbers, clerks, etc.

2. *Drawing the jury.* When a jury is to be drawn, the number of prospective jurors brought into the court is determined by the importance of the case. If it is of little consequence, that is, if the crime has not been spectacular and the culprit

who is to be tried is not notorious, a jury may be secured from a relatively small panel. Even in such cases, however, the attorneys for the defense and the prosecution are anxious to get an acquittal or conviction, if for no other purposes, at least to help build up a reputation for winning trials. So another selective process is employed in which all persons who may be thought to have opinions detrimental to the case of the accused or the state are eliminated. At this time, also, all unfortunate persons who have been drawn on the panel unwittingly by the persons who make up the list, such as the scattering of business and professional men and possibly some of the tradesmen, are able to escape jury duty by reason of having formed opinions about the case from reading the press accounts or on some other pretext. Those who remain and are finally sworn in to try the case may be classified generally as follows:

A. Those who are considered good material by the attorneys because they are without convictions and are uninformed of what is common knowledge through the public press.

B. Those who have deliberately declared themselves to be uninformed and without convictions in order to get on the jury.

C. Those who are willing to serve on juries for the small stipend allowed for the service and who commonly prolong deliberations in order to get free meals and an additional day's pay.

If the case to be tried is one which has attracted unusual public attention, the process of getting a colorless and witless jury is prolonged to lengths which savor of public disgrace. The following cases cited by Sutherland are in point:

"During 1920 a wealthy man was indicted on a charge of sedition; two months were required in securing a jury and 1200 prospective jurors were examined; those selected early in the trial were kept in confinement, though the accused was out on bail; it has been asserted that in a similar trial in Canada a jury was secured in ten minutes. It took ninety-one days to secure a jury to try Calhoun in San Francisco. In the Shea case 4821 jurymen were examined and the jury fees



amounted to \$13,000; in the famous Crippen case in England it took only eight minutes to secure a jury.”<sup>5</sup>

So great has become the aversion to jury service, according to the Cleveland Survey, that in many of the larger cities of the United States avoidance of jury service by persons of means and intelligence has become traditional and it has come to be a kind of mild disgrace for a “respectable citizen” to allow himself to be called for jury duty.<sup>6</sup> The same report indicated something of the extent to which jury boxes are occupied by “professional jurors,”—class C. indicated above. In the course of the ten years ending in 1915, 5489 names were drawn for jury service in Cleveland. Of these 388 were drawn a total of 1923 times. In January, 1921, because of unemployment, the presiding judge decided that jurors could serve extra time if they desired and the court did not object with a stipend of \$2 per day. As a result 40 jurors served twelve weeks each.<sup>7</sup>

3. *Ignorance of jurors.* The two-fold selective process described above tends to bring jurors into the box who are characterized by a low order of intelligence. Even were it not so, it would be a rare thing to secure a jury which was not practically devoid of the technical knowledge which is required in order to form a sound judgment on the basis of the evidence elicited in the process of a trial. Even if every one concerned were doing everything possible to keep matters from being complicated and confusing, technical knowledge and training are essential in weighing evidence and drawing conclusions. But where, as we shall see presently, everything possible is done to intensify the confusion the average jurymen is disqualified by the densest ignorance of what is required of him.

4. *The problem of prejudice.*<sup>8</sup> In spite of the elaborate sifting process described above we believe it to be impossible

<sup>5</sup> E. H. Sutherland, *Criminology*, pp. 273, 274.

<sup>6</sup> “Cleveland Survey of Criminal Justice,” Part I. *The Criminal Court*, by R. H. Smith and H. B. Ehrman, p. 116.

<sup>7</sup> E. H. Sutherland, *op. cit.*, pp. 274, 275.

<sup>8</sup> The following paragraphs are adapted from my *Responsibility for Crime*, pp. 112, 113.



at the present time for the average sheriff to get together, under ordinary conditions, twelve men or a group containing twelve men who would be chosen for jurors who could be said to be without prejudice of some sort which would influence them for or against the accused regardless of the evidence presented in the course of the trial. Disciples of Herbert Spencer will remember his classification of biases which one must overcome before he can successfully undertake a study of the social sciences.<sup>9</sup> These were the educational bias, the bias of patriotism, the class bias, the political bias, and the theological bias. We are more familiar with these under such titles as race prejudice, class antagonism, political prejudice and religious antipathies.

Persons familiar with the mental states of the so-called masses appreciate the antagonism which they entertain toward those who have had the advantages of higher education. This came out very clearly in the trial of Leopold and Loeb in Chicago and has given a definite impulse to the antagonism against scientific education in the present fundamentalist controversy. A university professor or a college student on trial is very apt to suffer from this prejudice at the hands of a jury.

Race antagonism is an important cause of prejudice and jeopardizes the position of an alien in a community where race prejudice prevails ever so slightly. Where the antagonisms are strong it is difficult to secure a jury free from this prejudice. This would be true in the case of an accused Oriental on the Pacific Coast and of a Negro standing trial in a southern state.

Class prejudice would imperil justice in a case where a wide diversity of social standing existed between the accused and his jury. Especially would this be true in a case where a manufacturer who advocated the closed shop had the misfortune to be tried before a jury of laborers committed to trade unionism. A walking delegate would suffer the same misfortune before a jury of business men and manufacturers.

Political antagonism is not so marked, but it should be taken

<sup>9</sup> H. Spencer, *The Study of Sociology*, chap. I.

into consideration where party feeling is strong,—especially where the fate or interest of a corrupt political machine is involved in the case.

Religious prejudices are a force to be reckoned with. Considering the bitter animosity which still exists between Catholic and Protestants in certain Western communities, and even that which occurs between rival Protestant denominations as well as the antipathy to Jews, Orientals and colored people revived by the Ku Klux Klan, and the now flaming antagonism of the fundamentalist toward the evolutionists in science and the modernists in his own denomination, we find a most subtle hindrance to perfect justice when a diversity in religious belief exists between the prisoner and his jury. Broad-minded as some of the learned men of some of our religious bodies may be, the average juror is drawn from the great mass of believers who hold an inherent aversion for unbelievers and adherents of other sects.

In addition to these familiar forms of prejudice, blood and national relationships, past associations of an intimate nature, personal convictions and ideals of justice and morals which may be held sincerely by individuals and yet be very different from prevailing ideas on these subjects, all tend to render the juror unconsciously prejudiced, for or against an accused person, and make the attainment of justice improbable in proportion to the extent of that prejudice.

5. *The psychology of jurors.* Ferri was among the first to go to the heart of the psychological problems involved in determining guilt or innocence. "Even apart from technical notions which we consider necessary to the physio-psychological trial of an accused person, social justice certainly cannot be dispensed through the momentary and unconsidered impressions of a casual juryman. If a criminal trial consisted of the simple declaration that a particular action was good or bad, no doubt the moral consciousness of the individual would be sufficient; but since it is a question of the value of evidence and the examination of objective and subjective facts, moral con-



sciousness does not suffice, and everything should be submitted to the critical exercise of the intellect.”<sup>10</sup> In addition to this, he notices “a fatal defect which alone is sufficient to condemn this institution of the law. In the first place, it is not easy to understand how a dozen jurymen, selected at hazard, can actually represent the popular conscience which indeed frequently protests against their decisions. In any case, the fundamental conception of the jury is that the mere fact of its belonging to the people gives it the right to judge; and as the ancient assemblies are no longer possible, the essence of the jury is that chance alone must decide the practical exercise of this prerogative.”<sup>11</sup>

At the conclusion of his chapter on the jury, Ferri advances his “two inevitable arguments of human psychology. First, the assembling of several individuals of typical capacity never affords a guarantee of collective capacity, for in psychology a meeting of individuals is far from being equivalent to the aggregate of their qualities. As in chemistry, the combination of two gases may give us a liquid, so in psychology the assembling of individuals of good sense may give us a body void of good sense. This is a phenomenon of psychological fermentation, by which individual dispositions, the least good and wise, that is the most numerous and effective, dominate the better ones, as the rule dominates the exception. This explains the ancient saying, ‘the Senators are good men but the Senate is a mischievous animal.’ . . . Secondly, the jury, even when composed of persons of average capacity, will never be able in its judicial function to follow the best rules of intellectual evolution. Human intelligence, in fact, both individual and collective, displays these three phases of progressive development: common sense, reason, and science, which are not essentially different but which differ greatly in the degree of their complexity.

<sup>10</sup> E. Ferri, *Criminal Sociology*, p. 185.

<sup>11</sup> *Ibid.*, pp. 186, 187.



“Now it is evident that a gathering of individuals of average capacity, but not technical capacity will in its decisions only be able to follow the rules of common sense, or at most, by way of exception, the rules of reason,—that is, their common mental habits, more or less directed by certain natural capacities. But the higher rules of science, which are still indispensable for a judgment so difficult as that which bears on crime and criminals, will always be unknown to it.”<sup>12</sup>

It is obvious that the above damning indictment of the jury is an indictment of the jury at its best. He does the average American jury too much honor. The following less restrained paragraph from Barnes is probably a better description of the mental condition of a typical jury in action. He writes:

“The jury, after a few days of bewilderment in the new and strange atmosphere, settles down into a state of mental paralysis which makes it practically impossible for a majority of its members to concentrate intelligently and alertly upon the testimony and the rulings of the court. At best, it is in a state of abstraction and absent-mindedness. The farmer wonders whether his hens are being fed or his horses properly bedded down, and the drummer bemoans his lost sales and ‘dates.’ Awakened from time to time from this stupor and these phantasies by the unusual beauty, volubility, resonance or obscenity of the witnesses and testimony, the jurymen suddenly pounce upon some more or less irrelevant bit of testimony and forget or overlook the most significant facts divulged by the witnesses. Thus we have, in a typical jury trial, the testimony of the witnesses and the rulings of the judge presented to a group of colorless men drawn from the least intelligent elements in the population at a time when they have lapsed into a mental state which practically paralyzes the operation of their normally feeble intellects.”<sup>13</sup>

<sup>12</sup> *Ibid.*, pp. 188, 189.

<sup>13</sup> H. E. Barnes, “Trial by Jury,” in *American Mercury*, Dec. 1924.

## VII. THE JURY'S TASK A TECHNICAL ONE

It is becoming more and more obvious that the task imposed upon the average jury is one for which its members have neither the intelligence, education, nor experience requisite for efficient performance. The idea of the fitness of the "casual jurymen" to deal with one of the most important of our social problems is directly opposed to the principle which has long dominated the world of business and industry. Only in public service and the ministry, perhaps, do we make such a stupid choice of material. Even in our daily round of affairs we make a more intelligent choice of the people who serve us. No one would dream of taking his watch to a cobbler or of having an ignorant longshoreman arrange the intricate legal details of a valuable estate.

The technical nature of the jury's task is obvious if one gives only casual consideration to the nature of evidence. To quote again from Barnes' article,—

"The situation as regards the testimony itself is scarcely more satisfactory. Psychologists, following the pioneer work of Münsterberg, have proved time and again that the most honest and intelligent eye-witnesses having observed an act in question leisurely and directly, are unable to testify about it with any degree of exactitude or unanimity. The testimony normally produced in the court room is incomparably inferior to that brought forth in carefully controlled psychological tests. There is usually a paucity of eye-witnesses, and those that actually exist are rarely persons of intelligence. Quite as likely as not they are among the undesirable citizens of the place, who would not be believed under oath if they were disgorging from any other vantage point than the witness chair. But even these inferior persons with their inadequate information are rarely allowed to testify in a straight-forward fashion. The technical rules of evidence often prevent their



being permitted to tell the most pertinent things they know. On the other hand, council may seduce them into making all sorts of vague insinuations about things of which they know practically nothing.”<sup>14</sup>

One or two examples will be sufficient to illustrate the foregoing statement. Parmelee in his chapter on *Evidence* gives the following interesting cases.<sup>15</sup> The first is from *Archives de l'anthropologie criminelle*, for March, 1906. “At a trial in Germany three witnesses, an architect, a teacher and an elevator man, testified each as follows as to how they went down in an elevator; the architect, that all were standing up, the teacher, that he sat down and the others stood, the elevator man, that he stood and the others sat. In this case two, and possibly all three, were not telling the truth, and yet it is highly improbable that any one of them was wilfully misrepresenting the facts.

“At a meeting of the ‘Association of Legal Psychology and Psychiatry of the Grand Duchy of Hesse’ at Göttingen, during one of the sessions, a clown and a negro rushed in and, after an excited altercation, rushed out. Each person in the audience, for whom this occurrence was quite unexpected, was asked to write an account of it. Forty reports were handed in and of these there was only one whose omissions of important details amounted to less than 20 per cent. Fourteen omitted 20 to 40 per cent of the important details, twelve omitted 40 to 50 per cent, and thirteen more than 50 per cent. There were only six that did not make absolute misstatements of facts; in twenty-four reports 10 per cent of the statements were manufactured, and in ten, more than 10 per cent of the statements were absolutely false.”<sup>16</sup>

In the light of the foregoing discussion of the make-up of the

<sup>14</sup> H. E. Barnes, *op. cit.*

<sup>15</sup> M. Parmelee, *The Principles of Anthropology and Sociology in their Relations to Criminal Procedure*.

<sup>16</sup> Quoted by Parmelee from L. W. Weber, in *Beitrage zur Psychologie der Aussage*, vol. iv.



jury and its mental capacity and psychological condition, let us now turn to a consideration of the factors which influence the jury from without.

### VIII. EXTERNAL FACTORS AFFECTING THE JURY

1. *The influence of lawyers.* In spite of the popular notion that our courts are places where we make an honest effort to do justice, it is well known that courtrooms are battle grounds in which opposing sides contend for victory. In the face of this situation justice goes glimmering. More often than not the purpose of the defense is to secure an acquittal whether the accused is guilty or not. Likewise, the prosecution is set on securing a conviction. The violence which this element of conflict does to the case is, perhaps, the greatest of all the evils of the jury trial. It results in the prostitution of truth throughout the trial. Each side stresses the facts of testimony which advance its chances of success and does everything in its power to counteract the influence of unfavorable testimony, be it ever so obviously true. In the course of this wilful mutilation of truth and justice the following well-known tricks of the legal profession are constantly resorted to.

A. One of the most common devices for winning a verdict regardless of the evidence is the appeal to the emotions of the jurors. The murderer who has a wife and a small child plays in great luck. His attorneys have them constantly in the courtroom looking the pictures of woe. In a recent trial in a Western State two men were indicted for the killing of a railroad detective who caught them red-handed robbing a freight car. Both were caught in the home of one of them and a part of the loot of previous robberies was discovered. They were tried separately. The one who was tried first was a single man and he was convicted. The second one had a wife and a small child who were constantly in the courtroom. With exactly the same evidence and witnesses, the defense decided to stake everything on an emotional appeal. The accused man was acquitted.

On this point Ferri writes: "The predominance of sentiment over the intelligence of the jury is revealed in the now incurable aspect of judicial decisions. There is no need and no use for legal and sociological studies and for technical knowledge; the only need is for oratorical persuasiveness and sentimental declamations. Thus we have heard an advocate telling a jury that 'in trials into which passion enters, we must decide with passion.' " <sup>17</sup>

This appeal to the emotions is not confined to the attorneys for the defense. The plight of the injured and the brutality and avariciousness of the accused are pictured luridly in order to make the accused appear as a monster in the jury's eyes. The appeal to the emotions may save the day when everything else fails.

B. Evasion and distortion of facts is a familiar practice. Evidence which is unfavorable to one side or the other is skillfully ignored, evaded or minimized by the side which stands to suffer by it. On the other hand, the same bit of evidence may be played up and distorted out of all proportion to its importance by the side which stands to profit by it. Akin to this is the practice of insinuation which injects into the case factors which have no bearing upon it whatever and even goes to the length of getting into the minds of the jurors notions of facts, situations and events which have never occurred. Once such notions have been carefully worked into the minds of the jurors they have all the weight of valid testimony.

C. Confusion of witnesses in order to prevent the presentation of damaging testimony is a practice constantly in use. In case this fails and the testimony is forthcoming, it is met by a skillful effort to confuse the jury by diverting attention to other points which may be distorted for that purpose. This occurs during the examination of witnesses, but it is especially effective in the closing remarks to the jury, for attorneys well know that decisions are going to be made on the basis of the few points which have been impressed upon the jurors' minds.

<sup>17</sup> E. Ferri, *Criminal Sociology*, p. 192.



The attorney most able to make points stick, therefore, is most apt to win the case. The relative importance of the points remembered is of little consequence for the reason that jurors are seldom capable of weighing facts.

D. Not infrequently, the evidence which finally determines the jurors' decisions bears little or no relation to facts. A familiar and frequently used practice is that of building up a fictitious case in which the witnesses are carefully coached before the trial. Often the best type of witness is the one who knows absolutely nothing about the case because he is most apt to follow instructions and is not in danger of suddenly and unintentionally telling the truth under the clever cross-questioning of the opposing attorneys. As a result, the trial often comes to be a contest in which the attorneys struggle to keep their witnesses from revealing the truth and to force witnesses of the opposition to reveal it.

The following pointed paragraph from Barnes is unfortunately not far from the truth. "Hence the outcome is essentially this: a body of individuals of average or less than average ability who could not tell the truth if they wanted to, who usually have little of the truth to tell, who are not allowed to tell even all of that, and who are frequently instructed to fabricate voluminously and unblushingly, present this largely worthless, semi-worthless, or worse than worthless information to twelve men who are for the most part unconscious of what is being divulged to them, and would be incapable of intelligent interpretation of the information if they heard it."<sup>18</sup>

E. The building up of expensive staffs of council for the purpose of obscuring facts and creating plausible fiction, together with the elaborate prolongation of trials at enormous expense to the state arises from the weakness of the present jury. A small group of expert referees could not be imposed on in this manner and such practices would cease. The staggering cost to the state of such trials as that of Thaw in

<sup>18</sup> H. E. Barnes, *op. cit.*



New York and Calhoun in San Francisco could be dispensed with for the greater part were it not for the fact that the jury invites just such demonstrations of futile manipulation of traditional legal practice.

2. *The influence of the judge.* The technical rulings of law have as little effect upon jurors as does the greater part of testimony. The elaborate instructions given to the jury by the judge are usually futile because of the jurors' total ignorance of even the most elementary law. The dignified and imposing mien of the judge may impress the jurors with the fact that the point he is making is important and that they ought to give due weight to it. This may result in their giving undue weight in their decision to material which the judge has carefully instructed them to ignore. The absurdity of striking out testimony is solemnly indulged in as though it were possible for one to eliminate from his mental processes something which has been craftily and insistently insinuated into them.

In like manner, in the final charge to the jury, the judge reminds the jurors that their decision is to be reached regardless of its consequences to the prisoner whose fate they hold in their hands, as though a juror could forget for the time being that he is condemning a man to die or to imprisonment for a period of years. The inability of jurors to obey this solemn injunction is constantly defeating the ends of justice and liberating at intervals upon a long-suffering public antisocial degenerates whose fate they have been unable to leave out of their deliberations.

3. *The accused and his victims.* Not infrequently a clever defendant may win his or her own case. If the accused is an attractive woman her impression of modesty, injured innocence, persecuted female, etc., may counteract the most damning testimony. Women who are able to make it appear that they have killed in defense of their honor or because of jilted affections are rarely ever convicted.

On the other hand, persons who have committed crimes under

extenuating circumstances have suffered the full weight of the law's displeasure because jurors were unable to forget the plight of their victims.

The relative influence of the accused and his victims upon the jury depends largely upon the lapse of time between the crime and the trial. If by some chance the customary delays of the court are avoided and the prisoner is brought to trial while the memory of his crime is still fresh in the popular mind the influence of the victim upon the jury is powerful. As the memory of the crime fades and repellent details are forgotten the influence of the prisoner begins to assert itself. The newspapers recite incidents of his past life and he begins to assume the character of a victim of unfortunate circumstances. If the trial is delayed until the memory of the crime is practically obliterated the prisoner may come to be a martyr to justice and the jury may sympathize with the popular clamor for his acquittal.

4. *The public mood and prevailing sentiments.* Juries are almost everywhere sensitive to the popular mood. This mood may be a special one which exists for the time being or it may be a settled state of mind which characterizes a community or a section. The French Revolution and Modern Russia furnish abundant evidence of the extent to which the jury may become a mere rubber stamp to give formal sanction to summary procedure against the enemies of the party in power. Efforts to bring to justice the leaders of mobs in labor disturbances and in race riots are almost universally fruitless because of the inability to get juries to convict. Evans found coroners' juries bringing in verdicts after inquests over the bodies of Negroes who had been lynched, as follows: "The deceased came to his death by swinging in the air." "We do not know who killed the deceased but we congratulate the parties on their work." "The deceased came to his death by taking too great a bit of hemp rope."<sup>19</sup>

Where a trial has had an unusual amount of publicity and

<sup>19</sup> M. S. Evans, *Black and White in the Southern States*, pp. 176, 177.



the public has made up its mind as to the guilt or innocence of the accused and this opinion is frankly expressed through the local press, the decision of the jury is more than apt to reflect this popular opinion.

### IX. INTERNAL EVILS OF THE JURY

From this consideration of the influences which are brought to bear upon the jury from without we shall turn our attention for a few moments to certain weaknesses, not to say evils, of the jury which are internal. After the witnesses, the attorneys and the judge have done their part and the case is given to the jury, the "fate" of the prisoner is in their hands in a very real sense. That fate may have little relation to what has transpired at the trial. There is practically no limitation upon what the jury may do. Let us follow them to the jury room, however, and consider what is very frequently done.

1. It is after the jury is locked in with the accumulation of mental impressions which it has received during the trial that events begin to take shape which shall determine the character of the verdict. Supposedly this is the merging of twelve minds in a "common-sense" consideration of all the facts. Rarely is this the case. Most frequently all or nearly all are in a daze resulting from the complete confusion to which they have been reduced by the events of the trial. Gradually this stupor wears off and the strongest minds begin to function more or less capably. In many cases the decision is made at this point. If the strongest minded and most domineering person on the jury has a conviction at this time he may hold out till he has brought every other member around to his way of thinking. In such cases the verdict is the opinion of one man rather than that of twelve.

2. Again, the decision may be more or less democratic, but it is necessarily based upon the impressions which the jurors have brought into the room with them. As we have seen, many



or all of these may be impressions made by the facts of minor importance which by reason of their commanding position in the minds of the jurors serve to determine the verdict. In this manner, the fate of the accused may be determined by isolated and even chance facts to the exclusion of practically every bit of testimony of importance.

3. Again, the desire to arrive at a verdict may swing a majority around in time to the position of a few of the most stubborn members of the jury so that the verdict of three or four may be substituted for the honest opinion of the other eight or nine less emphatic or persistent members.

4. The insistence of our laws upon a unanimous decision of the jury very often serves to defeat justice. A hung jury prolongs the deliberation itself and finally leads to a new trial which is apt to lead to another hung jury or an acquittal. After several unsuccessful attempts the prosecution becomes discouraged and the case is dismissed. A common resort of defense attorneys who find a jury escaping them is to play everything for one juror in the hope of preventing a verdict. This result is nearly equivalent to an acquittal.

5. The jury presents an anachronism in our legal structure. The judge, the attorneys, the conduct of the trial and every one and everything in connection with it are rigidly circumscribed by law. When the jury gets into its room it is a law unto itself. Regardless of the charge against the accused, it may find a verdict of almost any degree or kind of crime. It may ignore the charge of the judge. It may ignore any part or all of the evidence. It may render its verdict entirely upon the basis of its own feelings or prejudices which may have existed before the trial or have been engendered in the process of it. In taking the law into its own hands it may annul for that particular case statutory or customary law of long standing and vital social consequence. It may by so doing establish a precedent for subsequent decisions and thus take unto itself in a sense the law-making function in defiance of the popular will and express legal enactments.

## X. THE JURY IN SANITY TRIALS

In spite of all the foregoing, the continued use of the jury is nowhere more grotesque than in attempts to determine the sanity of an individual accused of crime. Perhaps there was some excuse for the use of the jury in passing on the sanity cases in the days when insanity was detected by the obvious departure of an individual from what was considered to be a normal mental state. With the present development of the science of the mind and nervous system in health and disease, however, it is now a well-known fact that the number of persons who reveal their mental pathology by conduct strikingly out of the ordinary is relatively small in proportion to those whose deviation from normal mental health is commonly detected only by the trained observer. Most of these would appear to the ordinary jury as normal individuals.<sup>20</sup>

Singularly, the legal profession, which is supposedly one of the learned professions, has been reluctant to admit this fact. We have here the dead weight of traditional practice opposed to an innovation clearly demanded by modern science. The threadbare excuse commonly offered by the legal profession that alienists have not yet come to an agreement as to what constitutes insanity is no excuse in defense of the perpetuation of the use of the jury in preference to expert clinicians.

In the face of this situation we have had the introduction of expert opinion under the worst possible conditions,—namely, as expert witnesses either for the accused or for the state. This produces the situation in which alienists are employed by both sides to contend with each other in a case where the contest should be supplanted by the absolutely dispassionate judgment of alienists interested in the truth regardless of its bearing upon the case in hand. This contest of alienists has tended to bring

<sup>20</sup> See W. A. White, *Insanity and the Criminal Law*, and E. B. Hoag and E. H. Williams, *Crime, Abnormal Minds and the Law*, especially the Appendix by A. M. Kidd and J. D. Ball.



the entire matter of expert witnesses into disrepute since it is possible to get persons who pass as specialists to testify learnedly on both sides of a case. This leaves the matter just where it was before,—in the hands of the jury. Which experts shall they believe?

Another result of this difficulty has been the resolution of the criminal trial into a trial for sanity when the plea of insanity is made. This is little better than the contest of specialists, for it has been shown repeatedly that even when the experts are agreed on the insanity of the accused, juries very frequently rely upon their own ability to judge and ignore the testimony of the alienists to find the accused sane. This results in the trial's following its natural course, the accused being convicted and sentenced to prison, only to be found insane there and transferred later to an asylum. White even cites several cases, and they are perhaps common, where even after such transfer to the asylum the prisoner is released on a writ of habeus corpus, gotten out of the jurisdiction of the original trial court, submitted to a jury test and declared sane.

The attempt on the part of judges to be guided by expert opinion in passing sentence in cases where the defense pleads guilty on grounds of insanity, as in the case of Leopold and Loeb in Chicago, may be met by the determined resistance of attorneys that the question of sanity can be determined only by a jury trial.<sup>21</sup> This difficulty can be resolved only by the elimination of the jury and the element of contest between alienists as well as all efforts by ignorant persons, including attorneys, to influence the decision of experts in clinical investigation.

## XI. THE PASSING OF THE JURY

In spite of the weight of tradition and the stubborn resistance of the legal profession, there is evidence that the use of

<sup>21</sup> See the *Chicago Tribune*, July 31, 1924, and Barnes' comment in "Trial by Jury," *American Mercury*, Dec. 1924.



the jury is waning. Sutherland finds that in the organized municipal courts most cases are tried without a jury though the defendant has the right of a jury trial. In the Municipal Court of Cleveland in 1920 only 15 cases were tried by jury out of a total of 2608 that might have been so tried if the defendant had insisted, and in Baltimore only 30 per cent of all criminal cases were tried by a jury.<sup>22</sup>

In the interest of justice, truth, efficiency and economy this elimination of the use of the jury should be speeded up until its use is reduced to a minimum, with the definite understanding that it is to be abandoned entirely as soon as society can be induced to adopt the only intelligent course open to it,—that of placing the whole matter of dealing with crime in the hands of persons specially trained to deal with it.

## XII. UNANSWERABLE ARGUMENTS AGAINST THE JURY

After all, the indictment of the jury resolves itself into a very brief statement of facts. The task which we have entrusted to it in the past is a job for technicians. That task, while one in fact, may be considered as two-fold,—first, *to get the facts*, as nearly as that is humanly possible; and, second, to protect society, as nearly as that can be done. The jury is not fitted to perform these functions, either as it is ideally conceived, or as it works out in practice. If there was ever a time when it was sound in principle, that time has long since passed. Its continued use is an indictment of our intelligence, whether our excuse for continuing it be our belief in its efficiency or our inability to find a substitute for it.

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## XIII

### THE POLICE AND THE PUBLIC

#### I. FUNCTIONS OF THE POLICE

“To an American who has intimately studied the operation of the European Police Systems, nothing can be more discouraging than a similar survey of the police of the United States. . . . He remembers the conscious pride of European cities in their police, and the atmosphere of public confidence in which they carry on their work. He recalls the unbroken record of rectitude which many of their forces maintain and their endeavor to create, with the aid of expert leadership, a maturing profession. He remembers the infinite pains with which the police administrators are trained and chosen, and the care with which the forces are shielded from political influence. Vivid in his mind is the recollection of the manner in which science and modern business methods are being applied to the detection of crime, so that on the whole the battle with the criminal is being fought with steadily increasing effectiveness. In America, on the other hand, the student of police travels from one political squabble to another, too often from one scandal to another. He finds a shifting leadership of mediocre caliber,—varied now and then by flashes of real ability which are snuffed out when the political wheel turns. There is little conception of policing as a profession or a science to be matured and developed. It is a job, held perhaps by the grace of some mysterious political influence, and conducted in an atmosphere sordid and unhealthy. It is a treadmill, worked without imagination or aim, and with little incentive except the desire to keep



out of trouble. . . . We have, indeed, little to be proud of. It cannot be denied that our achievement in respect to policing is sordid and unworthy. With all allowance for the peculiar conditions which make our task so difficult, we have made a poor job of it.”<sup>1</sup>

The foregoing is a carefully considered statement from an intelligent and highly trained observer of police conditions in Europe and America. There is nothing in his background which would lead us to believe that he is biased in favor of European practices as over against those of the United States. We must conclude, therefore, that this scathing indictment of American police systems is approximately correct. This being true, it is high time that we were concerning ourselves over the situation. There must be reasons for it and it must be possible for us to find out what these reasons are.

These conditions are a serious indictment of our institutions. Serious as that indictment is, however, it is not so serious as is our placid acceptance of the situation and our almost complete failure to concern ourselves about it. This, moreover, is only a part of the overwhelming evidence that in spite of our capacity for industrial and scientific achievement, we are singularly incompetent in matters of social housekeeping.

Here, as in all our social problems, an understanding of the situation is necessary if we are to act intelligently in connection with it. While most of the following material is well known to many students of the crime problem, it will have to be the common possession of a great many more before we can hope to remedy the situation materially.

## II. DEVELOPMENT OF THE POLICE SYSTEM

While the police system itself is relatively new, it represents a chapter in the history of the devices which society has contrived for social protection. In primitive societies where the group was small and extremely homogeneous, the main need

<sup>1</sup> R. B. Fosdick, *American Police Systems*, pp. 379, 380, 382.

was for protection against dangers from without. We have to wait for the development of a heterogeneous population and to a certain extent the development of private property before we are obliged to protect ourselves against the depredations of irresponsible and anti-social men from within our own ranks. As this progression from the simple to the complex in human society took place slowly and gradually the earliest needs were simple and the protective machinery correspondingly simple. The first protective machinery of consequence against criminals appears after the rise of a privileged class which was obliged to protect its interests against persons whose allegiance it could not command.

Just as the original *jurata* was a tax-assessing body and afterward became a jury, so also the shire reeve was the local representative of the king or lord in the county who finally came to be the guardian of the peace—although in some communities he still collects the taxes. The original sheriff, however, was the officer who protected the interests of a privileged class, first against outlaws, and then as life became more settled, against poachers and common thieves. As feudalism gave way to more democratic government the sheriff was perpetuated as the guardian of the public peace. America borrowed this system directly from England.

The policeman, however, is not the successor of the sheriff. His forerunner was the watchman, who at first was one of several who divided the task of guarding the village and seeing that shop doors were locked, etc. As the towns grew larger, these volunteer watchmen gave place to hired watchers whose main business was to scare thieves away. With the rise of the large towns the problems of keeping the peace became too complex for the watchmen and they were succeeded by the organization of police forces. This was done first in New York City in 1844. Seven years later a somewhat similar system was set up in Chicago, followed by New Orleans and Cincinnati in 1852, Boston in 1854, Baltimore and Newark, N. J., in 1857.<sup>2</sup> Since

<sup>2</sup> E. H. Sutherland, *Criminology*, p. 187.



that time this has become practically the only system of keeping the peace in large cities, although the machinery of the sheriff's office has been perpetuated and used in connection with the more serious cases of crime and law violation.

In addition to the county officials and the police there are other officers of the state and national governments whose business it is to enforce federal and state laws touching such matters as fish and game regulations, forest protection, the regulation of various industries, enforcement of prohibition and narcotic laws, etc.

On the continent a large part of the powers of local government is in the hands of the police department which, in some instances is organized similarly to or as a part of the military. This gives them many functions beside the enforcement of the law. The specialization of function of the police in England leaves most of these duties of the continental departments to other branches of the city government. The policeman, therefore, becomes only a person who performs for pay certain acts in the preservation of the peace which any private citizen is empowered to do if he is so minded. Fosdick, following Sir James Stephen, says, "a policeman has no right superior to that of a private person in making arrests or asking questions or compelling the attendance of witnesses."<sup>3</sup>

The English idea of the powers and functions of the police has been adopted in America. Critics of the American system have seen certain advantages in the centralized system in that it offers the chance to divorce the police from local political influences. Certain autocratic systems which have operated in Europe, however, are obnoxious to the American sense of self-government. Of the German system Fosdick writes:

"The autocratic spirit of the German Government (1915) is reflected in the imperviousness of the police to public opinion. The police department is a specialized institution in the details of which the people are held to have no proper interest. Not only are police records withheld from public scrutiny, but in

<sup>3</sup> R. B. Fosdick, *European Police Systems*, p. 15.



state-controlled forces no information of any kind relative to administration is ever vouchsafed to the citizens. Indeed, he would be a valiant man who would ask for it.

“The general attitude of the police toward the public is also indicative of the autocratic spirit of the German Government. The unfailing courtesy of the English police is often lacking in the German forces. Arbitrariness too frequently marks the conduct of the latter in their relation with the public. The great powers of the police official, his right to fine and imprison without judicial process, his exemption from prosecution for false arrest, breed an arrogance hardly to be tolerated in democratic communities.”<sup>4</sup>

There are certain other advantages in the centralized system such as the ability to keep track of migratory criminals and the avoidance of the details and handicaps of extradition between states. It appears, however, that the highly centralized systems have a tendency to develop an attitude toward the people which makes the conservation of the people's interests doubtful.<sup>5</sup> On the other hand, the decentralized system of police seems to harbor certain weaknesses which make for inefficiency and corruption. It may safely be said, that, in general, as we proceed from simple to complex social conditions, we progress from relative safety and security of life and property to increasing hazards of both, and a corresponding progression occurs from efficiency to inefficiency in the functioning of the police.

### III. WHAT WE EXPECT OF THE POLICE

To summarize briefly, we expect the police to keep the peace, to protect the innocent and their property, and to apprehend criminals. With certain aspects of keeping the peace we are not much concerned here. The increasing complexity of modern city life has imposed stupendous burdens upon the police

<sup>4</sup> *Ibid.*, pp. 77, 78, 79.

<sup>5</sup> M. Parmelee, *Criminology*, pp. 336, 337.

department in regulating traffic, handling crowds of people at certain places and at certain times of day, and in preventing rioting and disorder, in which the violations of the law are in the nature of minor offenses, i. e., trespasses rather than crimes. While the performance of these duties requires a special sort of technique the success of which is of tremendous importance to the convenience of the social body, it scarcely comes within the jurisdiction of protecting life and property and the apprehension of criminals.

Since the powers of the typical American policeman are legally no greater than those of the citizen, he is placed in the difficult situation of being obliged to a certain extent to take the law into his own hands. If he fails to protect life and property he is criticized for inefficiency. On the other hand, if in the performance of his duty he makes a mistake he is liable to be sued for damages for false arrest, inconvenience, defamation of character, etc. In fact, in order to succeed in the performance of their duties, the police are everywhere obliged and, perhaps, expected, to exceed the powers granted to them by law. The arrest of suspicious persons, requiring persons to give an account of themselves in certain places and at certain hours, the wholesale rounding up of questionable characters after a crime, and many other usurpations of power, are practically necessary and seriously harm no one so long as the police are not autocratic or arbitrary in the performance of these acts.<sup>6</sup>

On the other hand, capable policemen usurp much of the power of the courts in the settling of many disputes and the adjusting of many hundreds of difficulties upon the ground, on the whole rather efficiently and at a great saving to society. To make arrests in all such cases and hale the contestants into the court would glut the already sorely taxed judicial machinery and serve no real social purpose. So long as the officer is possessed of a fair order of intelligence and understanding of human nature, it is probably better to leave the situation as

<sup>6</sup> E. H. Sutherland, *Criminology*, pp. 188, 189.



it is than to clothe him with power to do these things in an autocratic manner as is the case in many continental systems.

The difficulty of the policeman's position is still further aggravated by the attitude of the public toward him. Not only is he condemned if he fails and bitterly censured if he makes a mistake, but the successful performance of his duty goes almost unnoted, and not infrequently the sympathy of the crowd or even of the public is with the law violator whom it is his duty to arrest.

#### IV. DEFECTS IN THE POLICE SYSTEM

The defects in the policing system employed in American communities are well known. We need give little more than a summary here. Methods employed in rural communities are, as we have seen, very old, while those employed in cities are relatively new. For these and for other reasons resulting from the character of the population, the problems of policing urban and rural communities are quite distinct.

1. *Rural communities.* The English system of county or shire officers for preserving the peace is employed in the United States. In counties which do not include incorporated cities, the sheriff, marshal and constable are the counterparts of the city police. In counties containing cities the two systems overlap, retaining the machinery of rural organization for the performance of certain functions, but leaving the matter of preserving the peace very largely in the hands of the city police. The familiar evils of rural policing are:

A. The officers of the peace in rural communities are commonly untrained and inefficient. They are commonly elected by ballot and by reason of the fact that duties are light and salaries not high in sparsely settled districts the offices are spoils for petty politicians.

B. The undesirability of the positions of lesser officers of the peace in rural communities and small towns or villages causes the office to be filled by incapable persons who are con-



tent to take the position for a pittance, or more capable persons are induced to perform the duties of the office as a part-time occupation. The result is mediocre service in the former case and often lack of attention to the duties of the office in the latter.

C. By reason of the fact that many communities required only the part-time service of an officer, a common practice of rewarding him by a fee system developed. This paved the way for the development of one of the gravest evils in the American political system.

(1) Under the fee system in which the officer was paid a certain sum for each official act, as so much for each arrest, so much for bringing a prisoner into court, for discharging a prisoner from jail, etc., there was the constant temptation to multiply these functions unduly in order to increase the fees. This led to many unnecessary arrests and the piling up of unnecessary court charges. This system was perpetuated in part by the fact that the prisoner could be made to pay most of them and thus avoid laying the burden upon the tax-payers.

(2) In addition to fees which could be collected from the accused the system included a practice as old as the English jail of making the task of boarding the inmates of the jail a part of the duties of the sheriff. In the old English system, the prisoners were obliged to pay for this service but this practice was finally abandoned for one in which the fees for boarding the inmates were paid from the public funds. This system has prevailed in America. It is open to grave abuses.

a. As the sheriff was allowed so much per day for boarding the inmates of the jail, there was the constant temptation to board them as cheaply as possible in order to leave a margin of profit to swell the income of the officer. The result was wretched accommodations and more wretched fare,—an abuse which was hard to check because the inmates of the jails were not in position to air their grievances effectively.

b. This practice also tended to keep the jail full in order to swell the profits of the sheriff. This was accompanied by

multiplying arrests and by retaining accused persons in jail on one pretext or another much longer than was necessary.

c. In counties with dense city populations, these devices made the sheriff's office a veritable gold mine. Such a system could not fail to lead to political corruption and grave abuses of power. On account of these the fee system has been abandoned in many American communities and the salary system for officers substituted for it. This change has come about in recognition of the principle that personal interest is incompatible with efficiency and justice, at least in this department of public service.

2. *City conditions.* In a sense, it may be said that, while the problem of the rural community is in part one of sparse population, the problem of city policing is aggravated by congestion. The crowding of people together in large numbers results, as every one knows, in the segregation of the rich from the poor, the successful from the unsuccessful, and to a certain extent, the vicious from the good. It is the "underworld" created by our cities which creates the most vicious abuse of the police power.<sup>7</sup> By one means or another the force which is designed to protect the community against its vicious elements comes to an understanding with those elements and gives them protection in return for a share of their enormous income. That protection may be outright protection in the form of immunity from interference or it may be immunity at the price of terrible extortion.

A. Protection of illegal practices, such as gambling, prostitution and illegal sale of intoxicants and narcotics is perhaps the more common form of police corruption.<sup>8</sup> This may be furnished by agreement with the leaders of a well organized underworld and the police, resulting in a double feudal system in which the leaders of the underworld levy upon their world to enrich themselves at the same time as they hush the police; and the police themselves distribute the spoils from the top down by

<sup>7</sup> J. Flynt, *The World of Graft*.

<sup>8</sup> E. H. Sutherland, *Criminology*, p. 191.



a similar system. Perhaps the more common practice is that of establishing collusion with the patrolman who shares his graft with superiors who may in turn share it with officials and political figures outside the city administration.

While it is not possible to learn the exact amount of the revenue derived by corrupt police departments from this source it is well known that colossal fortunes have been paid annually to the police in certain American cities by the vicious and criminal elements. According to the Chicago Committee on Crime, the professional gamblers in that city were paying \$50 a week for police protection for each of the "hand-books" operated. As it was estimated that there were 300 of these books, the total amount paid annually to the police in this form of graft alone would aggregate nearly \$800,000.<sup>9</sup>

This collusion of the police with the underworld may extend also to collecting of graft from criminals in exchange for immunity from arrest.<sup>10</sup>

B. The second source of corruption is that in which the revenue from the vicious and criminal elements is extorted by threats of arrest and persecution. The only distinction between this and collusion lies in the fact that collusion is a voluntary agreement to pay for protection, while in the latter case the police force the tribute through interference, and persecution and threats. This may lead to criminals and vicious persons being actually driven on in careers of crime in order to be able to meet the extortionate demands of the police.

C. Collusion or extortion may exist between vicious and criminal elements and a single officer or part of a police force. There may be political influences which protect dishonest individuals on a force and render them safe from genuine discipline. A corrupt superior in a department may be able to protect dishonest and incapable men beneath him. Fosdick cites the record of a Pittsburgh policeman as follows:

"Drunkenness, fined \$5. Under influence of liquor while

<sup>9</sup> *Report of the City Council Committee on Crime*, p. 166.

<sup>10</sup> *Ibid.*, p. 194. See also E. H. Sutherland, *Criminology*, p. 192.



on duty, second offense, discharged,—subsequently reinstated. Under the influence of liquor on duty, third offense, fined \$10. Neglect of duty, fourth offense, under the influence of liquor, discharged,—subsequently reinstated. Drunk on duty, fifth offense, discharged,—subsequently reinstated. Visiting saloon in uniform, sixth offense, discharged,—subsequently reinstated. Drunkenness, seventh offense, fined \$25. Eighth offense, fined \$25 and transferred. Ninth offense, suspended for three months. Intoxication, tenth offense, suspended thirty days. Drunkenness, eleventh offense, no record of punishment.”<sup>11</sup>

D. Another practice of the police which has brought them merited criticism is that of the common use of the “third degree” in order to secure confessions. Excessive cruelty and brutality at the time of arrest, on the way to the station and during the examination have tended to shift the public’s sympathy from the cause of the law to the criminal. Sutherland cites the claim of a Chicago lawyer who reported that he had won 126 murder cases out of 130, and that he would not have been able to win ten of them if he had not been able to secure evidence that the police had treated the defendant brutally.<sup>12</sup> An attorney of Portland, Oregon, boasted of having secured an acquittal of a burglar caught red-handed on the job by getting an officer to admit on the witness stand that he had intimidated the accused with a revolver during the “third degree.”

## V. DIFFICULTIES CONFRONTING THE POLICE

In the nature of things the provision of adequate police service for a community is a difficult task. Even if we could eliminate the question of honesty and temptations to graft, there are certain aspects of the problem which make the work of the police difficult. We shall discuss a few of those aspects which are typical in American cities.

1. *Difficulties inherent in the policing job.* We need only

<sup>11</sup> R. B. Fosdick, *American Police Systems*, pp. 286-287,

<sup>12</sup> E. H. Sutherland, *Criminology*, p. 193.

enumerate several difficulties which are inherent in the nature of the work our police are expected to do. Most of the work we have laid out for them to do is planned with slight consideration for the difficulties of execution.

A. *Much legislation unenforceable or difficult of enforcement.* Professor Goodnow points out clearly this aspect of the problem. "One of the results of attempting to determine the criminality of an act by its viciousness has been to force upon the police of cities in the United States work which, under the standards of morality prevailing in the cities, it is practically impossible for them to perform. . . . Public opinion seems to justify the passage of statutes upon the enforcement of which that same public opinion does not insist. The result is a temptation for the police which human nature is hardly strong enough to resist. The police force becomes a means by which the whole city government is corrupted. There has never been invented so successful a 'get-rich-quick' institution as is to be found under control of the police force of a large American city. Here the conditions are more favorable than elsewhere to the development of police corruption because the standard of city morality which has the greatest influence on the police force, which has to enforce the law, is not the same as that of the people of the state as a whole which puts the law on the statute books. What the state regards as immoral the city regards as innocent. What wonder then that the city winks at the selling by the police of the right to disobey the law which the city regards as unjustifiable?"<sup>13</sup> Fosdick calls attention to the contrast with these conditions in Europe. "The European police are not called upon to enforce standards of conduct which do not meet with general public approval. There is little attempt to make a particular code of behavior the subject of general criminal legislation. The high moral standards of a few people are not the legal requirements of the state. Only occasionally is there any movement to place upon the statute books laws which serve only to satisfy the consciences of those

<sup>13</sup> F. J. Goodnow, *Municipal Government*, pp. 265, 266.



responsible for them.”<sup>14</sup> In view of this situation, as Sutherland points out, the police will get into trouble if they do not enforce the laws and they will get into trouble if they do.<sup>15</sup>

B. *Disrespect for law.* These characteristics of much of our legislation tend to create a disrespect for law. For this situation Parmelee is inclined to lay most of the blame upon the reformers rather than upon the police.<sup>16</sup> Laws passed by a scant majority may find large numbers of individuals who feel no moral obligation to observe them. The consequent flouting of the law cannot fail to create disrespect for all law, especially when the violators are conspicuous persons and they are obviously protected by the police.

C. *Graft outside the force.* There is small inducement for the officers of the law to enforce such legislation when they know that influential persons in the government or out of it are profiting by the violation of the law. To the police and the denizens of the underworld these men are known as “unmugged grafters,” that is, their pictures are not in the rogues’ gallery but ought to be.<sup>17</sup>

We see therefore that many of the well-intentioned efforts of reformers tend to defeat the very purposes of reform by passing unenforceable laws which weaken respect for law and place almost irresistible temptations before the police.

2. *Politics and the police.* Because of the importance of the police department as a part of the party spoils system, good men rarely get into the police system, or remain there only a short time when they do. The brevity of tenure on account of the frequent changes of political fortune tends to make capable men shun the job and those who do get on the force seldom have time or encouragement to fit themselves to do the job well. The spoils system tends to fill up the force with the friends of the political boss and the ward heelers without any consideration

<sup>14</sup> R. B. Fosdick, *American Police Systems*, p. 379.

<sup>15</sup> E. H. Sutherland, *Criminology*, p. 193.

<sup>16</sup> M. Parmelee, *Criminology*, pp. 345, 346.

<sup>17</sup> J. Flynt, *The World of Graft*.



for fitness for the job. This condition builds up the force out of material which is peculiarly susceptible to corruption. The men may even be selected with that in view. Fosdick points to at least one American city in which the change of control from one party to another was followed shortly with a 95 per cent shift of the personnel of the police force.<sup>18</sup> Woods, who was probably the most efficient police commissioner New York ever had was retired because of a change in the city administration. Fosdick states that the average term of a police commissioner in London is about fifteen years, with a maximum of 39 years. In contrast with this, the average term in New York City is one year and seven months with a maximum of three years and nine months. Chicago has an average of less than two years, St. Louis has had 48 commissioners in 31 years, Newark 36 in 32 years and San Francisco 41 in 20 years.<sup>19</sup> Fortunately there are exceptions in a few American cities such as Boston, Milwaukee and Berkeley.

When a man has got on the force he often finds, as Woods stated, "that his advancement depends more on his friends than on his efficient work, and with that system it is not surprising that he devotes more attention to making friends than to performing duties."<sup>20</sup>

3. *The police force does not attract competent men.* There are several reasons for this other than those cited above. Sutherland enumerates the reasons as follows:<sup>21</sup>

Wages are low, ranging in 1921 from \$1380 in Kansas City to \$2000 in Cleveland and Chicago.<sup>22</sup>

Tenure of position is insecure.

The work is hard and dangerous and the conditions of employment are not attractive.

Thurstone's conclusion based on the scores of Detroit police-

<sup>18</sup> R. B. Fosdick, *op. cit.*, p. 272.

<sup>19</sup> *Ibid.*, pp. 234-240.

<sup>20</sup> A. Woods, *Policeman and Public*, p. 138.

<sup>21</sup> E. H. Sutherland, *Criminology*, p. 195.

<sup>22</sup> L. H. Cannon, "A Survey of the Salaries of Police and Police Departments, *American City*, December 1921.

men in intelligence tests was that the brightest policemen leave the work.<sup>23</sup>

4. *It is a difficult problem to maintain the integrity of the police.* So many factors are involved in the government of American cities that honest efforts to conduct an efficient police department are often unavailing. Ambitious and zealous officers find their efforts defeated by magistrates who discharge persons arrested. Instructions from "higher up" frequently require them to wink at law violations and to leave influential offenders unmolested. Not infrequently the raising of the level of integrity of the police would mean the raising of the level of the courts, the city administration or even the level of integrity of the entire community. Under such circumstances men in the police department can hardly be expected to resist the tremendous temptation to profit by its opportunities, for in this respect the police department is probably the most vulnerable of all city departments.<sup>24</sup>

## VI. EFFORTS TO IMPROVE POLICE CONDITIONS

The problem of overcoming what appear to be inherent evils in the police system has been up for consideration for many years. Two of the most conspicuous experiments looking to its solution are worthy of mention here. These are the resort to the state police or constabulary and the effort to improve the police system through the medium of the police-training school.

1. *The state police.* The resort to the state police came mainly to supplement the work of rural peace officers. This experiment has been tried in America largely as the result of the reputation of such forces abroad. State police forces which have enjoyed good reputations are the Royal Irish Constabulary, the Australian Trooper Police, the Canadian Northwest Mounted Police, and the British South African Police.

<sup>23</sup> L. L. Thurstone, "The Intelligence of Policemen," *Jour. Personnel Research*, June 1922.

<sup>24</sup> M. Parmelee, *Criminology*, p. 344 and note.



The first conspicuous organization of this character in America was that of the Texas Rangers in 1901. This force was organized to suppress outlawry, cattle stealing and conflicts among the cattle men and to protect the border. According to Conover, fifteen states had adopted somewhat similar tactics by the beginning of 1921.<sup>25</sup> These state forces ranged from a sort of citizen constabulary headed by the governor who were to be called on in emergency, as in Alabama, to the well organized full-time state police force of 400 men in Pennsylvania. The latter force was organized in 1905. During the ten years ending in 1915, this force traveled more than four and a half million miles, made 27,000 arrests, and secured 20,000 convictions. In 1920 the average number of arrests per member of the Pennsylvania force was 50, with convictions in 95 per cent of the arrests. The state police force of New York State in 1921 patrolled one and one half million miles, recovered 257 autos and \$118,116 worth of property, killed 304 sheep-killing dogs, seized \$892,500 worth of intoxicating liquors, and made 12,664 arrests, of which over half were for violation of traffic laws.<sup>26</sup>

It is argued that the state police gives rural districts more efficient protection than can be secured by local officers, especially in dealing with auto thieves, traffic violations, violations of quarantine, violations of the prohibition laws, etc. Its efficiency is supposed to be due to the fact that it is a trained force having state-wide jurisdiction.<sup>27</sup>

Arguments against the state police force, such as that it is an unnecessary burden on the tax-payers, that it is militaristic and that it may become a weapon in the hands of politicians may be dismissed without consideration. Of little more merit is the objection of local officers that it is a duplication of their work. The gravest accusation against the state police is that made by the labor unions that the force may be and are used to

<sup>25</sup> M. Conover, "State Police," *Amer. Pol. Sci. Rev.*, Feb. 1921.

<sup>26</sup> E. H. Sutherland, *Criminology*, pp. 201, 202.

<sup>27</sup> *Ibid.*, p. 202.



break strikes and are injurious to the cause of the working class. In reply to this, Sutherland argues that the state police are no more liable to be used in this manner than are the customary local peace officers or the temporary forces organized for the emergency. In fact, the state police may be highly preferable to private police forces recruited from strike-breaking agencies who employ gunmen who are strangers to the community and feel no responsibility.<sup>28</sup> In other words, there is no valid argument brought against the use of state police in labor disturbances which could not be brought against the use of any other kind of law-enforcing agency.

2. *The police training school.* The movement for training professional police got under way in Europe early in the present century. Ottolenghi describes the training school for policemen in Rome as a course in which policemen are taught description by the Bertillon and finger-print methods, legal photography, together with extended courses in judicial investigations and anthropology and psychology.<sup>29</sup> Inmates of prisons were used as laboratory subjects. Fosdick describes other schools of a similar character.<sup>30</sup>

Police schools which have attracted the most attention in America are that conducted in New York City and that of Vollmer in Berkeley, California. In the former the candidate for the force is required to take an intensive training for a period of two months. In the latter, Vollmer has worked out a combination of class-room work and practical experience on the job, together with a fairly rigid entrance test which altogether tends to produce an approximation of the "ideal policeman." In fact, one of his problems which has developed recently is the constant loss of his best men who are employed as police commissioners by other coast cities. This very fact suggests two needs of a slightly different character,—the need for training schools for local police forces, and the need of a

<sup>28</sup> *Ibid.*, pp. 202-204.

<sup>29</sup> S. Ottolenghi, "The Scientific Police," *Jour. Crim. Law*, March 1913.

<sup>30</sup> R. B. Fosdick, *European Police Systems*, pp. 211-226.

somewhat specialized school for training police chiefs and commissioners.

The curriculum at Berkeley includes physics, chemistry, biology, criminology, psychology, psychiatry, police organization, practice and procedure, micro-analysis, public health, elements of law and criminal law.<sup>31</sup> The period of training lasts three years and consists of one hour of class-room work a day throughout that time, in addition to practical training on the force. Vollmer has been able to secure and maintain an *esprit de corps* which elevates the business of being a policeman from a "job" to a profession. His "student policemen" vie with each other in mastering the technique of the profession and are constantly on the alert for new ideas and with suggestions for the improvement of the force.

The success of the Berkeley School for Police is due in part to the care with which candidates for training are selected. The following data are taken from a report on the results of the examination of applicants for position in the Police Department of the City of Berkeley, California, made to Chief Vollmer by Dr. Jau Don Ball who conducted the examinations:

Sources of information were (a) Application records, (b) Mental ability tests, (c) Educational tests, (d) Special ability tests, (e) Will-temperament tests, (f) Psychiatric tests, and (g) Physical tests.

The examination was divided into three parts:

- A. Preliminary examination.
- B. Physical examination of those qualifying at examination A.
- C. Final examination of applicants passing physical examination.

Examination A consisted of:

- 1. Intelligence tests.

<sup>31</sup> See A. Vollmer and A. Schneider, "The School for Police as Planned at Berkeley," *Jour. Crim. Law*, March 1917, and A. Vollmer, "A Practical Method of Selecting Policemen," same journal for February 1921.



2. Educational tests, including reading, writing, spelling and arithmetic.

3. Special ability tests, including visual memory, auditory memory, ethical judgment, planning. Three applicants were given additional tests in stenography and typing.

4. Psychiatric questionnaire.

Examination B consisted of:

1. Physical examination.

2. Neurological examination.

3. Laboratory tests of blood and urine, and kidney function test (only if applicant passes all other examinations).

Examination C consisted of a written examination for will and temperament. This examination gave opportunity to observe applicant especially regarding general appearance, bearing, and voice. It was designed to meet, as nearly as possible, the requirements of a Police Officer established by Chief Vollmer for his force. These requirements follow:

1. Superior intelligence. 2. Good physical condition. 3. Good nervous condition. 4. Good mental condition. 5. Personality characteristics of a special kind (aside from normal intelligence) as:

(a) Normal control of innate tendencies or instincts (according to McDougal's outline), as well as bodily activity. (b) Satisfactory disposition. (c) Good and desirable habits. (d) Recognized normal personal ideals. (f) Normal tastes. (g) Strength of character. (h) Satisfactory temperament.

6. Speed. 7. Accuracy. 8. Good reasoning ability. 9. Good auditory memory. 10. Good visual memory.

Berkeley is a suburban and university town of about 75,000 population. If Vollmer's plan could be faithfully applied in cosmopolitan centers, and this is not inconceivable, it would undoubtedly go far toward the solution of the police problem.

3. *The addition of policewomen.* One of the difficult problems of the police has been the handling of women prisoners. Much the same attitude has developed toward women offenders as toward juveniles. The result of this has been the effort to



modify the treatment accorded to them, especially in their arrest and detention. This has led to the development of women's divisions with policewomen who take over most of the work with women. These divisions have gradually developed a system of case work in handling offenders somewhat akin to that of the children's courts. Women police officers were employed in forty American cities before the war. This work was given a great impetus in the vicinities of the training camps during the war. Not all of this gain was held, however. Fifty-six cities reported 164 policewomen in 1920. The United States is represented in the International Association of Policewomen by 212 members.<sup>32</sup>

## VII. THE PROBLEM OF APPREHENDING CRIMINALS

In no phase of police work has the weakness of the American system been more conspicuous than in the *detective department*. The work is of a highly technical character and requires men of high intelligence and training. These qualities are rarely found in the average detective department of cities. According to Train the ordinary chauffeur is probably brighter than the average detective.<sup>33</sup> The army tests given to the police during the Cleveland Survey found the detectives to have the lowest average score of the entire department.<sup>34</sup> In consequence much of the work of the average detective department is mediocre and perfunctory. Unless the offender is apprehended at the time of the offense or he leaves unmistakable clues he is rarely discovered. In his ignorance of scientific methods of collecting information the untrained detective is apt to destroy most valuable evidence in the way of finger prints and other characteristic traces which criminals are apt to leave behind them. Once such clues are obliterated there is no way of restoring them.

On account of the inadequacy of the police detectives and

<sup>32</sup> E. H. Sutherland, *Criminology*, p. 200.

<sup>33</sup> A. Train, *Courts, Criminals and the Camorra*, p. 90.

<sup>34</sup> "Cleveland Foundation Survey of Criminal Justice in Cleveland," Part V. H. M. Adler, *Medical Science and Criminal Justice*, pp. 49-54.

in the absence of public machinery for operating over a wide territory, private detective agencies have gathered a harvest and created one of the gravest abuses in American social life. The men employed by these agencies are usually of a low type, many of them ex-criminals. In consequence they are not infrequently employed for illegal purposes and are seldom of much benefit to the public. Fortunately there are some outstanding exceptions in the way of highly efficient bureaus, and not a few highly trained and skillful "criminologists" work independently.

Gratifying progress is being made in some cities in the application of scientific methods in studying crimes and detecting criminals. Much remains to be done, however, to bring this function of the American police on a par with that of most European states.

1. *Identification of criminals.* Since the bulk of crime is committed by persons who have adopted criminal careers, it becomes highly important that society should develop some system of identification in order to protect itself against the roving miscreants who seek to escape the consequence of their acts by flight to more or less distant places. To be effective, a system of identification must be concise, easily recorded, easily communicated from one part of the country to another and, as far as possible, unmistakable. Quite naturally, a system which combines all of these characteristics is hard to find,—in fact, no such system has yet been devised. Several systems, however, have been highly developed and have been of great service to the police.

A. *The rogues' gallery.* One of the oldest and most common devices for identification has been that of making characteristic photographs of criminals arrested. These are preserved in what has come to be called a "rogues' gallery" which may be found in practically every police department in the country. Cuts of these are made and reprints can be distributed widely with a short description of the crime and usually with a description of the criminal. Rewards offered for the apprehension of persons thus advertised lead most officers and



many citizens to familiarize themselves with many of these photographs and notorious criminals are constantly being recognized and apprehended by this means.

B. *The Bertillon system.* This system of identification was originated in 1883 by the Frenchman whose name it bears. It consists of a selected number of anthropometric measurements, including the height, length of the middle finger of the left hand, measurements of the skull, eye orbits, certain bones of the arm, etc., together with a description of the face, especially the nose, the right ear and the color of the eyes. It includes a list of scars, moles, birth-marks etc., to which the finger-prints were added as a later development.

The Bertillon system has been widely used in the larger cities of America but it is said to be passing into the discard.<sup>35</sup> It is still used in connection with the photograph by the Federal Department to apprehend post office and mail robbers. Sutherland summarizes Fosdick's reasons for the passing of the Bertillon system as follows:

"The measurements require great care and great accuracy in the instruments; but many persons who use the method do not make the measurements carefully and the instruments easily become bent and inaccurate, so that the results are unreliable. It is difficult to secure accurate measurements of women because of head-hair, or to identify an individual by his measurements taken when he was younger."<sup>36</sup> To this may be added the fact that many of the smaller cities have neither the facilities for making measurements nor the persons trained to use them if they were available.

C. *Finger-prints.* The most absolute identification known is that of the finger-prints. While their use for this purpose has been known for many centuries in the Orient the practical application of this method in the Western world has been fairly recent. Its accuracy as a means of identification is now

<sup>35</sup> R. B. Fosdick, "The Passing of the Bertillon System of Identification," *Jour. Crim. Law*, September 1915.

<sup>36</sup> E. H. Sutherland, *Criminology*, p. 206.



quite generally conceded. Every individual carries on the balls of his fingers and thumbs printing devices which remain unchanged from before his birth until his death. They consist of fine lines made up of small segments of cuticle which usually pass around the end of the finger tending to rings, whorls, loops and arches centering near the center of the ball of the finger or thumb. These leave an imprint upon everything touched. No two of these have ever been found to be identical. For a long time after the impression, these may be brought out distinctly by dusting them with a fine carbon sprayed on with an atomizer. When this is brushed with a fine hair brush the print stands out distinctly and may be photographed and enlarged for classification. Finger-prints of the accused may be taken quickly by pressing the balls of the fingers in ink and then making an impression upon a blank sheet. If the imprint or imprints left at the scene of the crime are identical with any of those of the accused the identification is absolute and unmistakable.

The use of the finger-prints as a means of identification is coming into general use. The system has the advantage of being simple, of requiring little or no skill in taking the impressions, of requiring little time and of furnishing results which may be used for detection as well as identification. Unfortunately, clever criminals can guard themselves against leaving these fatal traces by the simple expedient of wearing gloves on the job or by careful rubbing everything touched to obliterate the impressions.

For purposes of identification these impressions are classified and indexed and many thousands of them may be filed in a small space resembling the card index of a library. By the simple device of establishing a national bureau of identification to which copies of all finger-prints taken are to be sent, it is possible to keep a record of past arrests which may be secured by any police department sending in a set of finger-prints. Such a bureau has been established at Leavenworth, Kansas. While it was not much used at first, indications are that it is coming into more general use and eventually it may be of great

service in collecting data on the efficacy of penal or other discipline.

D. *The Atcherley system.* This system of identification bears the name of its originator who is a Major in the English Constabulary. It consists of broadcasting a description of the method of operation of well known criminals to persons who are apt to be victimized by them. Armed with this description persons have been able to recognize notorious criminals while they are preparing the "lay out" for a crime.<sup>37</sup>

This system has its limitations because it can be used only in certain types of crime. It is said to have been used with considerable success by the police of California.

E. *Meldewesen.* While almost unknown in America, this system has been long in use on the continent of Europe. It consists in the filing of a complete record of every individual in the population at the place of his residence. When a man moves from one place to another he is required to report at once to the police on his arrival at his destination. By corresponding with his place of former residence the police are able to secure his criminal record if he has one. While this system has proved to be immensely valuable in keeping track of offenders it involves an amount of book-keeping and prying into the affairs of the individual which will probably prevent its adoption in the United States.

### VIII. PROPOSALS FOR SECURING MORE EFFICIENT POLICE

Many proposals have been advanced for securing more efficient police. Of these we shall consider only a few of the more important.<sup>38</sup>

<sup>37</sup> For a description of this method see, Katherine Mayo, *Justice to All*, pp. 165-166; also E. H. Sutherland, *Criminology*, p. 208.

<sup>38</sup> For fuller discussion see E. H. Sutherland, *Criminology*, pp. 195-201, M. Parmelee, *Criminology*, chap. XXI, Arthur Woods, *Crime Prevention*, p. 123, and R. B. Fosdick, *American Police Systems*.



1. *Change public opinion toward the police.* In many communities the attitude of the public toward the police is hostile and suspicious. It is no uncommon thing to find crowds belligerent toward officers in the performance of their duty. It is not necessary to discuss here the reasons for this attitude. It may be justified or it may not be. When such a situation exists, however, the policeman with the best of intentions and attitudes toward his office is greatly hampered and there is no inducement toward efficiency. Such a situation is bound to produce a low morale in the force.

A community cannot improve its police situation by taking this attitude. If the system is bad it is because the community has allowed it to become so. An attitude of hostility must be supplanted with one of loyalty to the police and pride in their work. If it is such that the community cannot be proud of it the remedy lies in the use of the ballot rather than in hostility toward a corrupt or inefficient police department. Such a department, safely entrenched in a corrupt city administration is impervious to public opinion and is made worse rather than better by public hostility.

2. *Development of Morale.* As a result of the war, American communities have come to appreciate that strange and elusive thing which we call morale,—that attitude toward a job or an organization which means the difference between cooperation, solidarity, loyalty, and good-will with it and lack of coordination, suspicion, antagonism and even treachery without it. Morale is indispensable to an efficient police force. It must radiate from the top down. Incompetent or corrupt leadership cannot command it. It is born of honesty, competence and singleness of purpose. This sounds strange and foreign to the jargon of the police, but strangely enough, the writer had the good fortune to hear the Berkeley police force discussing these very things in one of a series of weekly meetings devoted to the consideration of *Ideals of a Policeman*. The discussion was general, spirited and intelligent, and intensely practical. Much the same attitude is found in the



Canadian Mounted Police and similar constabulary organization.

The efforts of Woods when he was Commissioner of Police in New York and the present work of Vollmer have done much to improve the profession and the national conferences of police Chiefs and Commissioners are taking on the tone of other conferences of professional men.

3. *Conditions of admission.* Efforts have been made to improve the police force by requiring civil service examinations for admission. In some instances, this has actually served to keep incapable men on the force by reason of the difficulty of discharging men under civil service status. Much good would result if the civil service examinations were as rigid as those required by Vollmer for admission to the force at Berkeley. It is probably too much to hope that this may become the standard for civil service examinations in the near future.

4. *Make the job attractive to efficient men.* Vollmer's experience at Berkeley has demonstrated that security of tenure and a high ideal for the force make it possible to secure and retain efficient men as police officers. With tenure uncertain due to political influence, low morale in the force, with the department under suspicion by the public, with favoritism and protection of inefficient and even dishonest men by "higher ups", the job of policeman is not likely to attract the type of man most apt to make a success of it. Adequate pay, reasonable hours, security of tenure, recognition for excellence of service, fair chance at promotion, some system for making adequate provision for retirement in old age, and the loyalty and respect of the community are needed to attract good men.

5. *Incorporate features for preventing crime.* Arthur Woods has been the chief exponent of the idea of making the police force an instrument for preventing crime. Police authorities are inclined to believe that the amount of crime could not be appreciably reduced by the adoption of preventive police methods.<sup>39</sup> Woods believes that "the preventive policeman is

<sup>39</sup> E. H. Sutherland, *Criminology*, p. 199.

the policeman of the future. However faithfully he does it, he can no longer justify himself by simply 'pounding the beat.' . . . Police forces must try to keep crime from claiming its victims as Boards of Health try to keep plague and pestilence away."<sup>40</sup>

During his term as Police Commissioner of New York City Woods inaugurated many innovations such as a welfare officer in each residence district to try to keep boys from going wrong; a plan to secure work for released convicts; a Junior Police Force of boys working under the direction of the police; and the organization among the police of a welfare committee to provide emergency relief pending the handling of cases by regularly constituted relief societies. These and many other activities were undertaken in order to create good-will between the police and the criminal elements and groups of boys who were apt to begin careers of crime because of a feeling of antagonism against the police.

6. *Change the attitude of the press.* The newspapers can do much to improve the morale of the police force and the attitude of the public toward it. In many crime stories the criminal is made a hero and the sympathy of the public is enlisted in his cause. Ridicule is heaped upon the police and the cleverness of the criminal in the execution of his crime and in making his get away are elaborated. Trials are often reported in such a way as to create sympathy for the accused and odium is heaped upon the police for their efforts to "hound an innocent man to prison."

Here again, popular disapproval of a corrupt and inefficient police force is taking an unintelligent method of expressing itself. Theoretically, at least, the policeman is the representative of law and order. The criminal is always a man who has pitted himself against society. He openly menaces our property and our lives. He is not a hero and he should not be made one. He is despicable and should be despised by law-abiding men until they can be taught to pity him intelligently.

<sup>40</sup> Arthur Woods, *Crime Prevention*, p. 123.



Newspaper accounts of crime, therefore, should always keep these points in mind and picture the criminal for what he is,—an enemy of society. Whenever possible, crime stories should commend the zeal and skill of the police. When this cannot be done honestly, the newspaper's criticism should be aimed at those responsible for putting stupid and inefficient men on the police force. Society should stand by its officers of the law and the newspapers are in position to do more, perhaps, than any other agency in creating respect and loyalty for the police.

In conclusion, the case for police reform may be summed up in a few words. Much could be accomplished if departments could be freed from political influence and scientific methods were introduced for the protection of the public against criminals.

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## XIV

# THE ORIGIN AND DEVELOPMENT OF PUNISHMENT

### I. NATURE OF PUNISHMENT

PUNISHMENT and the elimination of the offender are the principal devices upon which society has relied in times past for protection against the criminal. While these two practices are widely separate in their origin and intent, they have come to be considered as different phases of the same thing.

Punishment, properly speaking, consists of pain or inconvenience imposed upon the offender by the will of society with a view to securing certain desirable results. The theories, motives and results of this will be discussed elsewhere. We are now concerned with discovering the origin and tracing the development of punishment including the death penalty.<sup>1</sup>

The idea of inflicting pain as a punishment confines us to a narrower use of the term than that implied in its common use where it included the death penalty, which is not a punishment at all but a penalty imposed in consequence of certain acts. The purpose involved in this case is the ridding of society of the offender in lieu of an attempt to bring about a change in his attitude toward itself. This confusion of ideas in the modern notion of punishment is clearly traced to primitive practices in which other motives than punishment were in operation. These other motives played an important part in the life of primitive man. Some of them have disappeared with the development of civilization, while others have suffered eclipse for many centuries only to reappear in modern times.

<sup>1</sup> On this subject see F. H. Wines, *Punishment and Reformation*; and H. E. Barnes, *The Repression of Crime*.

## II. PRIMITIVE REACTIONS TO CRIME

A perusal of the history of punishment impresses one with the fact that our primitive ancestors, despite their crude notions about things, did about as good a job in dealing with crime as we have been able to do with all of our boasted enlightenment. In fact, they would have been put to it to do worse. This is but another way of saying that in all the centuries of human experience we have made little effective progress until quite recently in dealing with offenders.

Primitive acts which partook of the nature of crimes were divided into three groups. Two of these groups were not considered to be criminal in the sense that the other was, but they have come to be crimes in the course of social development, and many primitive crimes have ceased to be such. We shall find the origin of our conception of punishment emerging from the processes which brought about these changes. It is doubtful if these ideas were present in primitive society.

As we have seen in Chapter IX, primitive acts which partook of the nature of crime were of three types; those of a public nature, those of a private nature, and those affecting near kindred. There were definite ways of reacting to each of these which we need to consider.

1. *Reaction to offenses of a public nature.* As we have seen, treason, sacrilege, witchcraft and some other acts which endangered the group by aiding the enemy, angering the spirits, inviting disaster from evil forces, etc., endanger the security and well-being of the entire group. The common reaction to such behavior was the annihilation of the offender. The motives behind annihilation were determined by the nature of the offense. If the act were treason it was the destruction of an enemy, for the traitor is an enemy. If the act were sacrilege, the destruction of the offender was designed to please or appease the spirits or demons, it might take the form of a sacrifice with the offender and sometimes his kindred as the victims.

This notion that the sacrilegious or sinful act in some way polluted the entire group is widespread among primitive folk and was responsible for ceremonials of public purification such as the scape-goat, the passover, and other cleansing practices made familiar by their place in Hebrew history. These primitive notions survive until the present time.<sup>2</sup> The annihilation of the offender whose acts has thus contaminated the entire group not only rid the group of the offending member but it, together with the destruction of his kindred and the blotting out of his name, as if he had never existed, served to eliminate the pollution which he had caused. Similar treatment accorded to the witch or magician partook also of the nature of what Sutherland calls social hygiene.<sup>3</sup>

It is clear here that this treatment is not punishment in the sense of inflicting pain with a purpose. It is rather social protection and social cleansing.

2. *Reaction to offenses of a private nature.* We have seen that most of our modern crimes were primitive torts. The primitive response to these was vengeance or retaliation. It was accomplished by the injured person or persons or their relatives. It was an affair to be settled between individuals or small groups rather than by the group as a whole. From it developed the feud and the idea that the punishment or vengeance should be gauged by the amount of injury in the first instance. The doctrine of an eye for an eye and a tooth for a tooth arises from this practice. At first it was purely private. Society did not take a hand in the settlement of these disputes until they endangered the social body. It is with the development of this interference that the idea of punishment arises. It is for this reason, also, that we have the close association of vengeance with the idea of punishment at the present time.

It should be remembered, also, that acts of this character were between individuals who were not of the same immediate

<sup>2</sup> W. I. Thomas and F. Znaniecki, *The Polish Peasant in Europe and America*, vol. IV, pp. 127 ff.

<sup>3</sup> E. H. Sutherland, *op. cit.*, p. 315.



kind. They were offenses against individuals of another clan.

3. *Reaction to offenses against near kindred.* In primitive society a man might injure or even kill a member of his own immediate family without fear of punishment or retaliation. Such offenses are "family matters" about which the larger group has notions and attitudes but which it does not undertake to redress. Such acts were looked upon as most unnatural and restrained by feelings of surprise and disgust,—a very effective form of public opinion.

In addition to this attitude of strong disapproval toward such acts, there was another and equally powerful deterrent. A man's security against wrongs or injuries from members of other clans lay in the numerical strength of his own kindred group. By killing or injuring one of his near kinsmen, he was in a sense injuring himself.

### III. THE EMERGENCE OF TRUE PUNISHMENT

It appears, therefore, that none of the foregoing reactions to the primitive counterparts of modern crimes come within the definition of punishment as pain inflicted upon the offender with a purpose. This idea does not make its appearance until primitive practices begin breaking down in the face of advancing civilization.

When the power of customary restraints over the individual begins to wane with the slow weakening of tribal organization, the inconveniences and disastrous consequences of private vengeance become intolerable. Society begins taking a hand in the settlement of disputes. It becomes increasingly difficult, also, to secure common consent for annihilation of the offender. His kinfolk may take his part against the remainder of the group and resist the customary practices. There is an increasing number of disinterested individuals who are not inclined to take sides. They are more interested in compromise than they

are in the observance of custom.<sup>4</sup> This results in the mitigation of vengeance, the elimination of unnecessary cruelty and in the practice of composition or compensation for damage in lieu of physical suffering.

The participation of the social group in the settlement of disputes raises the question of equivalents and eventually the idea emerges that certain acts deserve certain penalties. The infliction of a certain amount of pain by the crime is to be offset by an equivalent amount of suffering on the part of the offender. This is then considered to be right, or just. When the offenses which were formerly considered torts pass over to the realm of crimes, the idea of personal justice gives way to that of social justice,—instead of the offender paying the price of pain for the injured, he pays it at the demand of society. This at last is punishment, retributive and proportionate in its purpose, to which other purposes were to be added later. The infliction of pain to balance pain easily becomes the infliction of pain to pay a debt incurred to society and finally the plight of the punished is supposed to deter other offenders and prevent the repetition of the offense by the sufferer. Here we have the historic purposes for which punitive pain has been inflicted. The theory and efficacy of these will be considered in a later chapter.

#### IV. HISTORIC METHODS OF PUNISHMENT

In its age old struggle with crime society has hit upon four devices for dealing with criminals. All of these have been used in some form or other since the earliest beginnings of civil society. The most ancient of these are annihilation or some other form of elimination of the offender and the infliction of bodily pain. The others are more recent but still very old. They are the infliction of economic loss and the infliction of humiliation and public disgrace.

<sup>4</sup> E. Faris, "The Origin of Punishment," *Inter. Jour. Ethics*, October 1914. Also E. H. Sutherland, *op. cit.*, p. 317.



1. *Elimination of the offender.* The oldest and perhaps the most common method of eliminating the offender has been by the infliction of death. Exile or outlawry in most primitive societies meant practically the same thing. Banishment is the more modern form of this practice. As civilization has progressed, however, elimination of the offender from the group, for a time, at least, by means of imprisonment, has gradually superseded all of the others in common use.

A. *Elimination by death.* As we have seen, the early use of death as a means of ridding the group of the offender was not for the purposes of punishment. The methods of execution employed were dictated by the objects in view. They not only sought to despatch the offender effectively but also to secure certain other results which we have already considered.

The necessity for destroying a member of the group did not arise frequently in primitive society, because the group was small, homogeneous, and dominated by powerful customary restraints in the form of taboos. As these customary restraints upon conduct begin breaking down with the increase of numbers in the group and in the complexity of human relations, efforts are made to supplant these old natural restraints with artificial ones such as specified penalties for doing the forbidden thing. This change brings with it the motive of deterrence of others by means of the elimination of offenders. As a result, the infliction of the death penalty becomes more common and is imposed for trivial offenses. In order to increase its deterrent power, the execution is brought about in as horrible and spectacular a manner as possible including various devices for prolonging the terrible death agonies of the condemned. Such practices defeated their purposes. Horrible executions became so common as to lose their deterrent value. In the more advanced nations they have been almost entirely abandoned.

B. *Elimination by banishment.* Banishment of the offender by the primitive group was practically the equivalent of death. Without the support of his group he fell an easy prey to enemies, wild animals or starvation. The practice is carried far



over into civilization but in the course of time it is very much modified. It may mean exclusion from a given territory, or even restrictions upon one's liberty of moving about.<sup>5</sup> It may be a permanent restriction or only a temporary one. Although it was a common practice in primitive society and in ancient civilizations it had been almost completely abandoned for a long time when it was revived in England at the end of the sixteenth century, probably as a result of colonial expansion. Exile either to the American colonies or to Australia was practiced with intermissions from 1597 to 1867. From 1786 to 1867, 134,308 persons were banished from England to Australia.<sup>6</sup> Many other countries have employed transportation to colonial possessions to a greater or less extent. The practice has been pretty generally abandoned, mainly because of the opposition of the colonists to it.<sup>7</sup>

C. *Elimination by confinement.* Of the three methods of ridding society of the offender, imprisonment was the last to come into general use. It has now practically supplanted both of the older methods. It was rarely employed as a penalty in primitive society, in the ancient civilizations, or in our own civilization until modern times. While very old, the dungeon was small and rarely used for more than a few persons at a time. It was nothing like the great modern prison with its provision for thousands of inmates. The prison, as it is now employed, is a monstrosity for which modern society is entirely responsible. The growth of its use has been rapid; the revulsion against its stupidity and futility is mounting; it is to be hoped that its passing may be as swift as its advent.

2. *Punishment by means of physical torture.* Punishment by torture is the direct descendant of primitive vengeance. It has been used independently and in connection with the death penalty and in conjunction with imprisonment. Its original purpose was retaliation but it does not reach the heights of its

<sup>5</sup> E. H. Sutherland, *op. cit.*, p. 321.

<sup>6</sup> E. H. Sutherland, *op. cit.*, pp. 321-323.

<sup>7</sup> *Ibid.*, see also John Mitchell, *Jail Journal*, p. 264.

cruelty until it is used for purposes of securing penitence and of deterring others from committing crime. As the public's sensibilities became more and more obtuse from the sight of suffering, the authorities resorted to more and more fiendish methods of making the torture more terrible until the populace came to take a diabolical sort of delight in the sight of pain. The church vied with the civil authorities in producing more effective ways of producing suffering. The futility of such a procedure was bound to become apparent and reaction against it was fairly rapid when it finally came. Torture, except for purposes of discipline in prisons and in the illegal "third degree," has been entirely abandoned in the more advanced states. There is a powerful reaction against the continued use of it even to this limited extent.

3. *Punishment by means of financial loss.* Confiscation of the property of the offender either entirely or in part is almost if not quite as old as the institution of property itself. Composition developed to take the place of retaliation and sometimes accompanied it when society began taking a hand in the settlement of private quarrels. Eventually it replaced retaliation and took the form of damages which might be compensatory or punitive or both. When the ruler's officials began concerning themselves with crimes and with the settlement of private controversies, a part of the composition was appropriated by the officials to defray the expense of the state. In England the practice of awarding the "bot" to the injured began to decline about the twelfth century and the amount exacted by the king to increase until finally the entire amount was appropriated by the state. This is the origin of the modern system of fines.<sup>8</sup> The payment of damages to the injured except in civil suits almost disappeared. Only recently in America have we seen a tendency to revive the practice of awarding the fines or a part of them to the injured. The part appropriated by the state

<sup>8</sup> L. T. Hobhouse, G. C. Wheeler, and M. Ginsberg, *The Material and Social Institutions of the Simpler Peoples*, pp. 86-119. See also, E. H. Sutherland, *Criminology*, pp. 330-331.



long ago came to be looked upon as "costs" and these are now levied against the offender whether he is fined or not. These costs now defray a considerable part of the expense of the lesser criminal courts.

Confiscation of property survived a long time after the private settlement of quarrels was outlawed. One reason why offenders chose to submit to the ordeal rather than to take advantage of the trial by jury was the fact that conviction by the jury might entail the loss of all his property and sometimes that of his relatives.

4. *Punishment by disgrace or humiliation.* Punishment by the disgrace or humiliation of the offender ranges all the way from the infliction of temporary discomfiture to horrible mutilations of the body.<sup>9</sup>

A. *Temporary disgrace or humiliation.* While there is no clear-cut line between humiliating punishments and those which permanently disgraced the offender, it may be said that there were several forms which were not intended to inflict physical pain. Exposure in the stocks in public places with a statement of the charge was a common humiliation for lesser offenses. The ducking stool and the gag were used for scolds.

The infliction of pain was added in some cases of temporary humiliation as in the case of the brank, a device for gagging scolds and scandalmongers which pressed cruel spikes into the tongue, and in the case of public flogging. The public whipping post was a part of the equipment of every market-place for centuries. It is still legal in some States of the Union and its revival for certain offenses is occasionally advocated in others. Torture was sometimes used in connection with the pillory as when the victim's ears were nailed to the post. The ducking stool was a legal penalty in New Jersey until 1890 although it had been practically unused for many years.

B. *Permanent disgrace or mutilation.* Often the commun-

<sup>9</sup> On this point see E. F. DuCane, *The Punishment and Prevention of Crime*; W. Andrews, *Old-time Punishments*; and Alice M. Earle, *Curious Punishments of Bygone Days*.



ity was not satisfied with the infliction of temporary discomfiture. Certain offenses were thought to merit lifelong humiliation. For this purpose branding was a common device for certain offenses of differing degrees of gravity. One could be branded on the thumb, the hand, the cheek or the forehead as the seriousness of the case dictated.

Mutilation of the offender attracted more attention and was used in connection with branding or independent of it. Ducane tells how William Pryne lost his ears by sentence of the Star Chamber for seditious publications. The Earl of Dorset in pronouncing sentence expressed his personal opinion that he should be loath that he should escape with his ears. "Therefore I would have him branded in the forehead, slit in the nose and his ears cropt too." Two years later Pryne lost the remainder of his ears and was branded S. L.—seditious libeler—on both cheeks.<sup>10</sup> Fingers, hands and limbs were cut off and the eyes were put out for the more serious offenses.

Disgrace and humiliation might be inflicted also by exclusion of the offender from certain localities, requiring him or her to remain within a given territory and by the enforced wearing of a certain garb or badge of infamy.

Humiliation lingers in modern practice in the form of punishment which includes "removal from office, and deprivation of the right to hold a position of trust, honor or profit under the state." The odium attached to minor offenses has almost entirely disappeared but one is still more or less permanently disgraced by having served time in prison.

## V. THE AGE OF TORTURE AND CRUELTY

Treatment of crime in primitive society was characterized on the whole by simplicity of motives and expedition and effectiveness in practice. The object was to rid society of the offender and clear its skirts of odium. It was not to inflict torture upon

<sup>10</sup> E. F. DuCane, *The Punishment and Prevention of Crime*, and P. A. Parsons, *Responsibility for Crime*, pp. 56-57.

the offender or to bring about any change in his attitudes. The age of cruelty begins with the development of retribution or proportionate justice and the desire to secure penitence in the culprit. Its ferocity is due somewhat to its close relation to vengeance and in part also to the fact that we make the criminal who is caught a sort of scape-goat who suffers in part vicariously for the sins of all of us. There is a sort of holy exaltation derived from the sight of vigorous justice which compensates us for our own sense of guilt. A guilty crowd must punish somebody and the unfortunate criminal furnishes the opportunity.

The age of cruelty may be defined roughly as that period of time stretching from the beginning of the break-down of primitive simplicity to the time when humane intelligence begins to put a check upon the emotional efforts to vindicate certain theological and speculative notions regarding conduct. It begins with the effort to control society by artificial devices when restraints of custom have lost their power over individual impulses, and corresponds to a fairly low stage of civilization.

According to Sutherland, such methods of inflicting death as burning, boiling in oil, breaking at the wheel, the iron coffin, drowning, and impaling have their greatest development, not in the lowest groups or in the highest, but in the society of the mediæval period.<sup>11</sup> Torture thus inflicted, along with the death penalty, was obviously indulged in to satisfy a desire of vengeance and to deter others, as it could not have a deterrent or curative effect upon the offender.

The use of torture without the death penalty, either as a punishment by itself or in connection with imprisonment, combined the idea of making the offender smart for his crime, the idea of inducing him to repent of his evil ways, and the idea of deterring others from evil-doing by the sight of his suffering. In a phrase born of the time it was "putting the fear of God into evil-doers." As ferocious and cruel methods of execution began to wane they were supplanted by the more expeditious

<sup>11</sup> *Op. cit.*, p. 318.



and less painful practices of decapitation and hanging. As these methods brought death quickly, their deterrent value was not great. In consequence hangings were carried out in public places and by roadsides and the bodies were left suspended as a warning. Various devices were resorted to to prevent speedy decomposition of the corpse that it might hang the longer.<sup>12</sup> The use of torture and mutilation survived into the period when imprisonment became common. Prisoners were chained, suspended by the thumbs, pressed with weights, deprived of food and confined in unspeakably filthy places.

Because of the lingering confusion over the division of power between the church and the state, the church for a long time retained the right to punish moral offenders. Several of the ideas and much of the ferocity of punishment came over into civil use from this source. As the goal of life was to make sure of the future life, any methods were considered legitimate to produce repentance and to preserve the soul.

## VI. NAÏVE SURVIVALS IN PUNISHMENT

The establishment of the ideas of guilt or blame led to phantastic practices. Animals were punished by execution and imprisonment and were even pardoned by rulers. Inanimate things which had caused fatal or disastrous accidents were submitted to trial and execution, punishments or banishment.<sup>13</sup> Such practices were common from the fourteenth until the end of the eighteenth century. Design or intent appears not to have been considered, save at certain relatively brief periods, in the treatment of criminals, and little interest in responsibility was manifested. A common explanation of evil-doing was that the act was the work of the devil or an evil spirit.<sup>14</sup> It was not until the eighteenth century that the doctrine of free will and responsibility replaced the prevailing idea of possession.

<sup>12</sup> W. Andrews, *Old-time Punishments*, pp. 211-212.

<sup>13</sup> G. Ives, *A History of Penal Methods*, p. 252; E. P. Evans, *The Criminal Prosecution and Capital Punishments of Animals*, p. 143.

<sup>14</sup> E. H. Sutherland, *Criminology*, p. 335.



VII. THE ASCENDENCY OF IMPRISONMENT AS  
PUNISHMENT

The occasional use of the prison as a means of punishment is quite ancient. It appears to have been used by the church as early as the fifth century but was employed on a much larger scale in connection with the inquisition in the thirteenth century and after. In the form of the jail, it makes its appearance in England in 1166 but it was not then a form of punishment. The Assizes of Clarendon provided for a sort of cage or enclosure in each district in which persons arrested were to be kept waiting trial and until their execution if condemned to die. These jails were emptied periodically by visitations of the court. Persons arrested immediately after the sessions were obliged to remain in the jails until the next jail delivery which might be many months afterward.

For the next six hundred years the horrors of these places were unspeakable. Toward the end of this period there appeared a tendency to use the jails as places of punishment. This marks the beginning of the modern prison system. Imprisonment at hard labor became a punishment in West Jersey by enactment in 1681.<sup>15</sup> The workhouses were made to do duty as prisons in England in 1715. The use of the prison as a place of punishment increased rapidly from this time on and gradually supplanted execution and torture. Milder forms of humiliation persisted with occasional revivals of cruelty until the end of the nineteenth century. Under the austere influence of a puritan migration into New Jersey there was a distinct revival of cruelty in the latter part of the seventeenth century in that colony. In May, 1700, it was provided that the proper punishment for burglary, in addition to the making of four-fold restitution, for the first offense was thirty-nine lashes on the back; for the second offense thirty-nine lashes and

<sup>15</sup> H. E. Barnes, *Report of the N. J. Prison Inquiry Commission*, vol. II, p. 39.

branding with the letter T on the forehead; and for the third offense branding with a T on the cheek, imprisonment for twelve months at hard labor, and thirty-nine lashes each month during confinement.<sup>6</sup>

The nineteenth century was to witness a revulsion against the illogical, irrational and highly emotional efforts to suppress crime by ruthlessness. After 1830 the use of capital punishment was practically abandoned in England except for murder.<sup>17</sup> It is growing in disfavor even for that purpose in the United States. The prison is perhaps no more rational than the forms of punishment which it has supplanted but its use marks the passing from the treatment of offenders of a certain amount of vindictiveness and emotion.

### VIII. VAGABONDAGE AND CRIME

Vagabondage and petty criminality bear a close relation to each other. They emerge at about the same period of social development and from largely the same causes. The breaking up of the old communal arrangements caused many men to lose their secure footing in society. The more hardy and venturesome and rebellious became outlaws and preyed upon travelers and the unprotected communities. Other "broken men" joined themselves to powerful chieftains as *villeins*. The ne'er-do-wells who were formerly taken care of after a fashion by their kin-folk and neighbors became vagabonds and beggars, living in part by petty thievery. From that time to the present those individuals who have lost their social and economic footing in society have been prone to vagabondage and criminality. As civilization advanced these persons increased in numbers. The outlaws were hunted down after a time by the authorities and the highways were made safe for commerce; but the vagabonds and petty thieves increased until they were a serious problem for organized society. Against them the old methods

<sup>16</sup> H. E. Barnes, *op. cit.*, p. 35.

<sup>17</sup> P. A. Parsons, *Responsibility for Crime*, p. 101.



of corporal punishment were ineffective. Their presence in the group brought forth the jail and the workhouse. It has been difficult to distinguish between these two institutions from the first until now.

### IX. THE JAIL AND THE WORKHOUSE

As we have seen, the jail was created in 1166 to house offenders awaiting trial. For four hundred years it served as a place for dumping the community's social wreckage. It was civil society's first answer to the problem of social failure. Felons and petty criminals, prostitutes and insane, debtors and paupers, the young and the old of both sexes were dumped into these places and nearly forgotten.

Vagabondage, idleness and pauperism became so great a problem that the communities felt the necessity of doing something about it. An effort was made to distinguish between the worthy and unfortunate on the one hand and the mass of idlers and petty criminals on the other. The workhouse appeared as a part of the system of poor relief to provide work for the idle and instruction for the young. The house of correction was a part of the penal system designed to force vagabonds and beggars to contribute something toward their own support. The first house of correction, the Bridewell, was established as a sort of a charitable enterprise in the middle of the sixteenth century. It seems to have been both a workhouse and a house of correction. The property was given by the King in the hope that it might help with the treatment of sturdy vagabonds and also serve as a sort of hospital for the lewd and idle and in addition give work to the unemployed and instruction for children.<sup>18</sup>

In 1576 Parliament passed a law providing for such an institution in every county. In 1609 this was made obligatory. Officers of the peace were enjoined to use them for the classes mentioned above, but, to distinguish them from the prisons,

<sup>18</sup> E. H. Sutherland, *Criminology*, pp. 326-327.



their use was confined to petty offenders. This combination of charity and correction made it practically impossible to distinguish between the workhouses and the houses of correction. By the beginning of the eighteenth century the house of correction and the jail were practically the same, both in the character of their inmates and the manner of their discipline.<sup>19</sup>

In America the workhouses became a definite part of the penal discipline, either combining the functions of the county jail or used in connection with it for petty offenders. The nearest counterpart of the English workhouse proper in the United States is the county poor farm or poorhouse which is now coming to be called the county hospital.

American society is still confronted by an unsolved problem of vagabondage and its accompaniment of petty crime. Industries which are characterized by seasonal demands for labor, the possibility of practically free transportation for vagrants upon freight trains, and the advent of the highways and "free" auto camps together with the astounding vitality of cheap "used" automobiles have served to increase the army of floaters who have lost a footing in either the economic or social system. In coping with these we are still using the jail, the municipal lodging house, soup kitchens, rescue missions, men's resorts and an occasional wood-yard; and this after we have been confronted with the problem in some form or other for eight hundred years.

## X. EVILS OF PENAL INSTITUTIONS

With the exception of an outstanding institution here and there, the jails, houses of correction and prisons were unspeakably horrible until the middle of the nineteenth century.<sup>20</sup> For the most part our jails and workhouses have continued to

<sup>19</sup> S. and B. Webb, *English Prisons Under Local Government*, pp. 16-17.

<sup>20</sup> E. F. DuCane, *The Punishment and Prevention of Crime*; W. Andrews, *Old-time Punishments*,

be terrible although the gravest of the old abuses have nearly disappeared. Throughout a long period they were catch-alls for the scum of society with which few were concerned further than to get them out of sight. Their presence in the social body necessitated some action. Confinement became the expedient. What happened to them there was of little public concern. As a result the gravest of abuses, such as the mingling of the sexes, the old and the young, the presence of filth and horrible diseases, cruel treatment, grafting of private keepers and public officials and the constant dumping of their polluted product out into society to be turned over and over again, persisted for centuries and resisted the efforts of reformers for generations.

That such conditions could persist so long in a society supposedly dominated by humanitarian principles and, during the latter part of the period at least, committed to ideals of political liberty and education, remains a problem for the historians and sociologists. Several reasons for their persistence, however, are obvious. The inmates of these wretched institutions, were, for the greater part, social outcasts. An austere theology accorded them the condemnation of sinners,—they were accursed of God. Their custodians under the private system were mercenary and inferior persons,—no others would undertake the task. After they became public property these places were in charge of incompetent persons who were soon brutalized by their occupations. Society itself was indifferent and oblivious. When matters were called to the attention of the public and reforms were instituted, they met with vigorous opposition on the ground that the old conditions were deserved and reforms would lead to an increase of crime and vice.<sup>21</sup> Ben Jonson protested vigorously against the fury of innovations which threatened to dull the edge of justice.

<sup>21</sup> E. F. DuCane, *The Punishment and Prevention of Crime*, p. 41; B. Beaumont, "Essay on Criminal Jurisprudence," *Pamphleteer*, 18: 73 ff., 1821; and B. and S. Webb, "English Local Government," vol. I, *The Parish and the County*, p. 596.



## XI. SUBSTITUTES FOR IMPRISONMENT

The reaction against the use of imprisonment as a means of punishment is well under way. There are several reasons for the increasing desire to get away from it. It is futile as to results; expensive to operate; and undoubtedly contributes to the process of criminal making. The use of fines is an illogical but persistent substitute. The parole or conditional liberation of prisoners has come into general use in part to escape from the demoralizing influence of imprisonment and to lessen the burden upon society. Suspended sentences and probation have become popular partly because they avoided the necessity of sending offenders to prison. The separate treatment of juveniles both in the courts and in correctional institutions developed to save the children from the demoralizing influence of the jails and prisons. There is some indication that we are becoming increasingly loath to use them for adults also.

## XII. THE PASSING OF PUNISHMENT

Our increasing dissatisfaction with the prison as the most important remaining form of punishment is more than a revolt against the prison and its evils. It is also a growing dissatisfaction with punishment of any kind. Punitive institutions are on the defensive. Growing knowledge of the conditions which cause anti-social conduct is adding its influence to the distrust caused by the failure of punishment to get results. Indications are that in the new scientific program for dealing with offenders, punishment will have little if any part. It has already too long survived the passing of the conditions of civilization which brought it into existence.

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## XV

# THEORIES AND EFFICACY OF PUNISHMENT

### I. ORIGINS

It is not probable that our primitive ancestors did much if any theorizing about punishment. Custom and taboo were sufficient to justify practice. If pressed for a reason they would have said that was the way it always had been done or that some mythical personage had told their ancestors how to do it. It was when these traditional methods began working badly and they were forced to adopt expedients that they began to feel the need of reasons for doing this or that. It was probably the conflict between the urge of vengeance and social expediency which created the first sense of need of justification for certain practices. The idea of justice is probably a sublimation of the desire for vengeance. Vengeance was naïve reaction which, if not instinctive, was at least closely associated with the instinct of self-preservation. Pain or injury aroused a very natural desire to inflict pain or injury upon its cause. It is an easy step from this to the idea that the giving of pain should be followed by the suffering of pain. Vengeance went little farther than this and it is likely that the pain inflicted in return was greater than the original if opportunity offered. It was when society interfered that the effort was made to balance the amounts of suffering.

Once the idea takes root that the punishment for injury should equal or balance the injury it seems natural to jump to the conclusion that this is so in the nature of things,—that is, justice demands it. When religion concerns itself with morals, justice is the will of God. “Justice is mine, saith the

Lord." Again, the God, among other things, requires that one should "deal justly."

When this state of reasoning is arrived at, the old zeal for vengeance now finds an outlet in zeal for justice, especially on the part of one who has been injured. He *demand*s justice, i. e., he insists upon something which is *right in the nature of things*. Society comes to agree with him in this and acknowledges the obligation. Society has no immediate interest in the particular case, but it has accepted the abstract principle that justice must be done. Justice then comes to be conceived of as a state or condition which society is obliged to preserve as nearly as possible.<sup>1</sup> The epitome of this view is the traditional figure of justice holding scales, armed with a sword, and blindfolded to prevent the sight of its victims from arousing sympathy.

Around this nucleus, other ideas are grouped in the course of time, until our present attitudes toward punishment are a strange conglomerate of mingled deposits cemented together by the necessity of doing something and the insistent urge of being able to give a valid reason for doing it.

## II. AVOWED PURPOSES OF THE PUNISHMENT OF CRIME

1. *Repentance of the offender* has been an early and persistent motive behind punishment as a result of the powerful influence of theology in Western civilization. Punishment of offenders and heretics by the church sought to accomplish repentance as well as reformation. Reformation was the evidence of penitence. "I require not continuance of time," said Chrysostom, "but the correction of your soul; demonstrate your contrition, demonstrate your reformation, and all is done."<sup>2</sup>

This idea of bringing about penitence was the prime motive

<sup>1</sup> P. A. Parsons, *Responsibility for Crime*, pp. 123-126; also E. A. Ross, *Social Control*, p. 108.

<sup>2</sup> George Ives, *A History of Penal Methods*, pp. 38-43.



of the Quakers in their prison reforms. It was thought that a man would be given to reflection in solitude and the sooner repent of his evil ways. He was, therefore, isolated as completely as possible, and the prisons came to be called *penitentiaries*.

2. *Deterrence of others* from committing crime is one of the oldest motives for punishment. As we have seen, along with vindictiveness it was a powerful motive for torture in connection with the death penalty. It was probably more than anything else responsible for torture and mutilation without death. It was responsible for the spectacular elements in executions and punishments and for the long exposure of the corpse of the condemned. It was an objective in public humiliations.

3. *Expiation or retribution* has been an important factor in the perpetuation of punitive pain, independent of any other motive and in connection with the desire for repentance and reformation as well as with the objective of deterrence. The idea that guilt must be wiped out and that an inexorable law demands retribution is still prevalent in popular thinking. Because of this, punishment to the extent of the law is often enacted in many cases where absolutely no social purpose is to be served by such punishment.

4. *Reformation of the offender* was hoped for in early ecclesiastical punishments. From this source it came over into civil practice. The hope of reformation became a predominating influence in the movement for prison reform in the last century and substituted the *reformatory* for the prison for youthful offenders. The futility of the prison as a means of bringing reformation about has been the principal reason for the growth of the tendency to abandon it in favor of other means to that end. After a survey of European prisons, the late Dr. Barrows wrote:

“The purely vindictive idea, though in Europe as in our country still embodied in the law and tradition, is not as it once was the predominant feature in punishment; the idea of social protection dominates as it naturally must and leads to

the segregation of the social offenders; but it can as truly be said that reformation of prisoners is regarded as one of the ends through which every prison system must demonstrate its value and utility.”<sup>3</sup> This position marks the lingering hope of the group of men who made prison history in the last half of the nineteenth century; who gave us Elmira and subsequently two dozen or more similar state institutions. Eighty-eight reformatory institutions were known to the U. S. Bureau of Education in 1900. This number had increased to 159 in 1918.<sup>4</sup>

The earlier reformatories were organized under the dominance of the prison idea and many of them were scarcely distinguishable from prisons save by the age of their inmates. Since 1900 there has been a rapid tendency in the direction of industrial training schools and away from penal or punitive methods. These indicate the abandonment of punishment, as such, as a means of reformation.

5. *Economic motives* have played a considerable part in the punishment of offenders. The state's appropriation of a part of money settlements and eventually the entire amount led to this being an important source of revenue. Fines, as we have seen, are still an important source of income in the magistrates' courts. The earlier use of the jails included imprisonment for the purpose of collecting fines. In the last half of the thirteenth century this is said to have been the primary motive for imprisonment.<sup>5</sup>

The early workhouses or houses of correction combined simple devices for making vagabonds put forth effort, but there soon developed a loathness to see this energy wasted. From that day to this one of the problems of prison discipline has been how to make inmates of penal institutions contribute the greatest possible amount toward the cost of their support.

For over three hundred years, from the fifteenth to the early part of the eighteenth century, maritime commerce offered

<sup>3</sup> S. J. Barrows, "European Prisons," *Charities*, December 1907.

<sup>4</sup> E. H. Sutherland, *Criminology*, p. 408.

<sup>5</sup> *Ibid.*, p. 324.



a profitable employment for criminals. The galleys continued to be a popular method of combining punishment with profit until the competition of faster sailing vessels made the galleys unprofitable. In England and in France special efforts were put forth by the state during the seventeenth century to influence magistrates and judges to substitute sentences to galley labor for other methods of punishment wherever possible.<sup>6</sup> Society continued the use of hulks for prisons for a time after the galleys became unprofitable.

Prison reformers, however, must be given credit for having employed labor for reformatory rather than mercenary motives. Peter Rentzel's reformatory was established in Hamburg in 1669 in the hope that the inmates might "*by labor and religious instruction* be reclaimed both for time and eternity."<sup>7</sup> This was also the motive of the Quakers in introducing labor in the cells to counteract the disastrous results of solitude.

A combination of economic motives with motives of reformation and industrial training led to the development of the industrial prison. This has become the prevailing type of penal institution in the United States.

In addition to various schemes for making public and private use of convict labor inside the prison several ways were devised to make it possible to exploit convict labor outside of the institution. Among these were indenture and the lease system. In both of these systems the convicts were bound or let out to private contractors for their labor. Grave abuses have arisen from the private use of the labor of prisoners, both in and out of prison. Atrocious cruelties were resorted to in order to secure the largest amount of labor possible from the convicts. The practice of leasing is still employed or its use is legal in a number of Southern States.

6. Under the influence of modern criminal science, *the protection of society* is coming to be the permanent object of punitive institutions. Regardless of the weight of importance

<sup>6</sup> *Ibid.*, p. 326.

<sup>7</sup> F. H. Wines, *Punishment and Reformation*, edition of 1919, p. 117.



which a greater or lesser portion of the population may attach to the other motives of punishment which we have discussed, there is this supreme test which it must meet,—does it adequately protect society? We may lust after vengeance but we can dispense with it. Penitence, expiation and retribution are in reality only fancied necessities. It is important that persons who are potentially criminal should be deterred from entering upon criminal careers and society has certain assets in those who have already become criminals which it is highly desirable to conserve. But except insofar as these are means to the end of social protection they are of secondary importance.

To a greater or lesser extent, however, all of these motives persist and society is as yet far from conceding the futility of punishment for any or all of these purposes. These motives carry great weight and together will perpetuate punitive methods until long after they have been demonstrated to be futile. It is not without interest or profit, therefore, for us to undertake a survey of man's experience with the more important methods of punishment with a view to estimating the extent to which he has secured the ends sought for.

### III. SURVEY OF PUNITIVE METHODS

We are not concerned here with primitive practices which antedate punitive notions. Certain mediæval practices merit passing consideration, especially those which are represented to an extent by modern survivals. Our main interest will be in a consideration of the two methods upon which society mainly depends for protection at the present time,—the death penalty and imprisonment.

#### 1. *Miscellaneous forms of punishment.*

A. *Mutilation and torture. Whipping.* Torture, when applied as a part of executions, was but a thinly veiled form of vengeance. It was justified as expiation and retribution

which were imaginary values serving no purposes other than to satisfy the popular notions of the fitness of things. Its deterrent value has never been established. The piling up of penalties for repeated offenses and the resort to more and more fiendish methods of inflicting suffering seem to indicate that the effects were the opposite of those desired. No doubt the same thing was true of torture without death and of mutilation. The social handicap of the branded offender weighed heavily against his social rehabilitation. Penitence secured by these means must have been often transitory and of little real social or spiritual value. In fact, so suspicious was the church of penitence manifested in fear of death that Gregory IX in 1229 ordered that all persons who after arrest were converted in the fear of death should be imprisoned for life.<sup>8</sup>

The only legal survival of torture is the use of whipping as a punishment for certain offenses. This was a common form of punishment in the American Colonies but it is now permitted by law in only two states. In Maryland it is still permitted as a punishment for wife-beaters but seldom used. In Delaware it may be used for this and several other offenses. Twenty-nine negroes and five white men were legally whipped in Delaware in 1922.<sup>9</sup>

The advocates of whipping claim that it is economical, is an effective deterrent, keeps offenders who may be punished in this way out of the state, and is a most effective reformatory agency for certain types of offenders.

There is little or no evidence to back up these claims. On the other hand there is evidence to show that men are made more brutal and desirous of retaliation. Sutherland presents the following data from various sources:

Out of 461 persons whipped by order of the court in Wilmington in 1904 the recidivists were as follows: 54 had been whipped twice, 14 three times, 4 four times, and 1 five times. Warden Meserve of the Wilmington Workhouse stated that

<sup>8</sup> E. H. Sutherland, *Criminology*, p. 325.

<sup>9</sup> *Ibid.*, p. 366.



“men who have been whipped are never as good prisoners as before.” It either breaks their spirit or makes them worse brutes than before; it does not humanize or socialize them.<sup>10</sup>

It is safe to assume that these were the results of the earlier forms of corporal punishment of which whipping is the survival.

B. *Enslavement in effect.* Nothing needs to be said of the effects of the use of the galleys upon the wretches who were enslaved in them. The use of this form of punishment was probably no more demoralizing to the public than were many other forms of punishment with which they were familiar. The modern counterparts of this system are indenture, the contract system, and the lease system which have been used from Colonial times to the present in some parts of the United States.

Indenture was practiced in most of the Colonies. In Louisiana a man could be bound out for debt for a period not to exceed seven years. He could be kept chained. Missouri had such a law until 1897. Massachusetts has had an indenture law since 1695. After a long period of disuse it is beginning to make a guarded use of it again in connection with parole.<sup>11</sup>

The contract system was legal in Massachusetts before 1800 but was not employed to any great extent until after 1820, from which date it was the principal method of employing convicts for half a century.<sup>12</sup> It consisted of turning over the labor of the prisoners to private manufacturers on contract to pay the state a fixed price per convict. The piece-price system was used in New Jersey and Pennsylvania at different periods. This was really the contract system under a different name.<sup>13</sup>

The lease system was employed in Massachusetts, Kentucky and a few other states early in the nineteenth century. It was adopted in Missouri and Illinois in 1839. Under this system the conduct of the prisons was turned over entirely to

<sup>10</sup> *Op. cit.*, p. 366.

<sup>11</sup> J. D. Hodder, “Indenture of Prisoners,” *Jour. Crim. Law*, May 1920.

<sup>12</sup> J. R. Commons, *History of Labor in the United States*, vol. I, pp. 153-155. Cf. H. E. Barnes, “The Economics of American Penology,” in *Journal of Political Economy*, October 1920.

<sup>13</sup> E. H. Sutherland, *op. cit.*, pp. 450-451.



the lessee. The gravest abuses in connection with this system arose in the Southern states after the Civil War. The states were without prisons and funds and the convicts were leased to private parties who employed them in lumber and turpentine camps and on other forms of work where they were submitted to atrocious treatment and the worst kind of living conditions. Opposition to this method of employing prisoners drove it out of all state prisons except Alabama, though it is still lawful to employ it in connection with county prisons in Alabama, Louisiana, Mississippi, and the Carolinas.<sup>14</sup> The system has only the economic argument in its favor.

C. *Banishment, transportation and floating.* Arguments used in favor of sending the offender out of the country are that the system effectively rids the community of the criminal and that he stands a better chance of rehabilitating himself in a new place.<sup>15</sup> England is said to have abandoned the practice because it was not successful as a deterrent or as reformation. It is still employed to some extent by France.

A modified form of transportation is practiced in the United States in the deportation of unnaturalized aliens who commit crimes. This is passing the responsibility for the criminal back to the native country rather than inflicting punishment.

There is, however, a practice in common use throughout the United States which is in reality a modified form of transportation. It is the absurd practice of shipping criminals and undesirable persons from one community to another. Because it is employed mainly in connection with an irresponsible and transient population it has come to be called "floating." It is employed officially by the magistrates' courts and unofficially by the police. Petty criminals are arrested and released on condition that they leave town. Undesirables are ordered to leave town on pain of being arrested if they do not. The

<sup>14</sup> See article, "Florida Makes a Beginning," *Survey*, May 15, 1923, cited by Sutherland, *op. cit.*, p. 451.

<sup>15</sup> G. Ives, *A History of Penal Methods*, p. 140.

reasons for the perpetuation of this stupid practice are supposedly practical ones. It is employed with undesirables to rid the community of their presence. They cannot pay fines. They are too numerous to permit of the use of the jail, for this would practically amount to supporting large numbers of vagrants at public expense. The advantages of "floating" are imaginary rather than real. Communities merely exchange their undesirables in this manner. The practice is demoralizing and does not undertake any sort of treatment of the offender. It makes it impossible for the person treated in this manner to establish himself even if he should have the desire. The community is not relieved of the burden in the long run because casuals and vagrants live somehow, either by labor which is largely unproductive, by petty thievery, or by begging or as downright dependents upon public or private charity.<sup>16</sup>

D. *Restitution and compensation. Fines.* Reparation or a fair fight were probably the first substitutes for unrestrained vengeance, imposed by society as a matter of convenience. In time the fight became inexpedient and compensation or composition as it was long called was permitted and finally compelled. This practice had a firm hold upon the imagination of North European peoples. Tacitus found it among the Germans. It persisted and was in general use here till the time of the American Revolution. We have seen how it gradually disappeared as a larger and larger share was appropriated by the state until nothing remained of the practice but "costs" and the fine. While this method was in general use efforts were made to add to its deterrent value by making restitution several times greater than the amount of damage. It was used in connection with punishment of other kinds also; the compensation being for the injured party and the punishment satisfying the demands of society at large. In modern practice the injured party has been forced to resort to the civil courts for damages

<sup>16</sup> A good discussion will be found in S. A. Queen, *The Passing of the County Jail*, chap. I.



and society has substituted the fine for other punishments to a great extent. The combination persists, however, in fine or jail, or both.

It is not a compliment to human intelligence that the most reasonable of all forms of punishment should have so completely disappeared from use. No doubt there has been a considerable amount of informal resort to it during the last century since it is so logical that the one who has done the damage should be the one to make it good if possible.

The reasonableness and practicality of compensation or restitution have led some penologists with increasing insistence to advocate its revival for over seventy-five years. Definite plans have been proposed from time to time, perhaps the most practicable being that advocated by Garofalo and his followers.<sup>17</sup> While not applicable in all cases of injury it could be used to advantage as a substitute for imprisonment in most cases involving property and many involving personal injury. Reparation or compensation should be required by the court; immediately, if the guilty person has property; or gradually by means of compensated labor required of the offender in or outside of an institution. If the amount is not great the restitution could be a condition of probation to good advantage. The latter method is rapidly coming into practice in the United States with satisfactory results.

The following advantages of the plan are claimed by its advocates: (a) The injured party would have redress. (b) The effect upon the offender would be better as he would be making logical amends for the injury he had caused. (c) The stigma of punishment would not inhere to any great extent after the offender had faithfully made reparation. (d) The state would be relieved of the expense of supporting the individual who made restitution on parole. (e) Better results would be secured from the individualization of treatment of those who would be obliged to make restitution while restrained

<sup>17</sup> R. Garofalo, *Criminology*, Am. Crim. Sci. Series, pp. 419-435. See also P. A. Parsons, *Responsibility for Crime*, chap. IX.



because the entire process would have a rational objective instead of the aimlessness of prevailing methods.

The fine has nothing in its favor except that it produces revenue and acts as a deterrent in common with all punishments. On the other hand, the fine is not feared by the rich; it works a hardship upon the poor; and deprives the dependents of the offender of needed resources in many instances where the cause of the fine is failure to provide.<sup>18</sup>

E. *Loss of status.* In spite of the fact that there is confusion in court decisions upon the subject of what constitutes infamy,—whether it is the result of having committed a certain kind of crime or of having been punished in a certain manner, loss of status is a part of the punishment for crimes which are declared to be infamous. Loss of status may consist of the following:

In most states (a) the right to vote and (b) the right to hold public office are lost on conviction of an infamous act. Such a conviction may carry with it (c) the loss of the right to testify under oath, (d) to serve on a jury, (e) to act as guardian or administrator. Certain infamous crimes on conviction bar one from (f) practicing a profession such as law or medicine. (g) Rights in court or in prison may be lost or curtailed. (h) Conviction of crime is ground for divorce in nearly all states. (i) Bodies of persons dying in prison may be devoted to science under certain conditions. Conviction of an infamous crime may (j) deprive an individual of the right to migrate to a foreign land, (k) may subject him to deportation, and (l) prevent an alien from being naturalized unless pardoned.

In commenting upon infamy as a punishment, Sutherland writes: "The original purpose of infamous punishments was to isolate the offender. It was a form of banishment; at least it was designed to produce the same result that banishment did, namely, place social distance between the offender and the law-

<sup>18</sup> For a good discussion see Sutherland, *op. cit.*, pp. 376-381.

abiding citizen. In later society an evident desire to protect the social and political institutions plays a part, and the suffering of the offender from the loss of the rights may be merely incidental.

“But both from the standpoint of the punishment of offenders and the qualifications for participation in our institutions such deprivations are undesirable as they now stand. While the offender is in prison, he probably should not be permitted to vote, hold office, or exercise some of the other rights. But his rights should be automatically restored as soon as he is placed in the outside community, even on parole. The purpose of the restoration to the community is that the group may assimilate him; but assimilation will not be promoted by this device for maintaining social distance; the group cannot assimilate him by driving him out of the group in the social sense.”<sup>19</sup>

This was obviously written with infamy from imprisonment in mind. Where the loss of status is a punishment in itself, as in the case of the disbarment of an attorney or the withdrawal of the right to practice medicine, the disqualification should continue until the person disqualified has won the right to public confidence. This, however, should be looked upon as social precaution rather than as punishment.

2. *The death penalty.* Historically mankind has resorted to the death penalty for two principal reasons. Aside from the notions of expiation and retribution, which we may dismiss as of theoretical rather than social importance, these have been the extermination of the offender and the deterrence of others. As to the effectiveness of extermination in ridding the community of the offender there can be no question in the individual case. Social utility, however, may be determined by the extent to which a remedy is used. If there are certain notions attached to the practice which stand in the way of its use its values may prove to be theoretical rather than prac-

<sup>19</sup> *Op. cit.*, pp. 387-388.



tical. The utility of the method, therefore, must be determined by its efficiency in securing the results desired. In the absence of more conclusive evidence, let us survey man's experience with the death penalty with a view to learning what he has expected and still expects of it as well as the extent to which those expectations have been and may be realized.

A. *The death penalty as a deterrent.* A Heath judge in condemning a horsethief to the gallows said, "You are sentenced to be hanged, not because you stole the horse, but in order to prevent others from stealing horses."<sup>20</sup> Here is a frank statement by an English magistrate that property in horses would be insecure unless horsethieves were hanged. There is no sentimental mouthing about justice, expiation, retribution or penitence. Men must be taught that horse-thieves who are caught will be hanged.

Efforts of the English people to make the death penalty an effective deterrent were responsible for some of the blackest pages in their history. In the second edition of his *Commentaries on the Laws of England*, published in 1769, Blackstone says: "Among the variety of actions which men are daily liable to commit, no less than one hundred and sixty have been declared by act of parliament to be felonies without benefit of clergy (punishable by death)." The death penalty was carried out by hanging, burning, or the axe and, during a few years of the reign of Henry VIII, boiling to death was made lawful for poisoning. Burning was a punishment for heresy and petty treason. A woman was burned for counterfeiting in 1788. Hanging was substituted for burning in 1790. Some time prior to this burning was mercifully preceded by hanging.<sup>21</sup>

Under the leadership of Romilly, Bentham, McIntosh, Cruickshank, and others, capital punishment was reduced as the power of the common people increased. But as late as 1814, Romilly tried in vain to substitute simple hanging for treason in place of the existing penalty of hanging, cutting

<sup>20</sup> E. F. DuCane, *Punishment and Prevention of Crime*, p. 2.

<sup>21</sup> P. A. Parsons, *Responsibility for Crime*, p. 86.



down alive, disemboweling, cutting off the head, and quartering the body. Though the complete penalty which the law provided was not actually carried out, the members of parliament were afraid that treason would be greatly increased if the law was modified.<sup>22</sup>

Romilly tried from 1810 to 1818 to have pocket picking over one shilling and stealing taken out of capital offenses. He was at last successful. In 1833 a child of nine years was sentenced to be hanged for breaking in a patched window with a stick and stealing two pence worth of paint, but the sentence was not executed. From 1832 to 1844 no one was hanged in England for any other crime than murder. Gradually the fact was being forced upon the mind of the authorities that capital punishment was not reducing crime. The desperate efforts of the past one hundred years had been the result of ignorant fears that the foundations of society would be overthrown. The increasing futility of more and more violent repressive measures roused the country to a frenzy which multiplied executions. Gradually the reaction came and has continued to the present.

Sutherland attributes the increasing reluctance to resort to capital punishment in part to the increasing social and political power of the common people. Under the influence of the property owners the courts sentenced prisoners to death but even at the beginning of the 18th century only a little over fifty per cent of the sentences were executed. This percentage of executions steadily declined until in the six years preceding the revision of the code in 1833 only a little over four per cent of the death sentences were executed.<sup>23</sup>

The death penalty was never so extensively used in the American Colonies. About the middle of the nineteenth century there was a movement to abolish it altogether. Four states had abandoned it by 1876 and eight more joined them

<sup>22</sup> *Philanthropist*, 3; 267-293, 1813. Quoted by Sutherland, *op. cit.*, pp. 319-320.

<sup>23</sup> E. H. Sutherland, *op. cit.*, p. 319.

between 1907 and 1918. There has been a general tendency to reduce the number of offenses punishable by death and two thirds of the states which retain it have made it optional with the judge or jury whether the sentences shall be death or life imprisonment or some other penalty. Public executions have been generally abandoned and many of the commonwealths have substituted electrocution for hanging.

The arguments against the abolition of the death penalty have included the claim that murders would increase without it. An examination of the statistics available for the communities in which the death penalty has been abandoned does not bear out this claim. Sutherland finds that the variation between states is independent of whether they have or have not capital punishment. After a survey of the available data he concludes:

“The only conclusion furnished by the statistics is that the evidence regarding the deterrent value of the death penalty is decidedly inconclusive; whatever evidence there is tends to show a relatively unimportant relation between the death penalty and murder rates. The argument of the advocates of the death penalty that it is valuable as a means of deterrence is not sustained.<sup>24</sup>

B. *Expedient uses of the death penalty.* Independent of its deterrent value, two arguments have been advanced for the death penalty on the ground of expediency. It has been suggested that this is a convenient way to rid the community of degenerates. This argument certainly has merits in particular cases. Its inconsistency, however, lies in the fact that it singles out the defective who has committed murder while many others are equally or more dangerous. Even if all murderers who are executed were degenerates the number would not be great enough to make any appreciable impression upon the total degenerate population.

In addition to the inconsistency of perpetuating the death penalty for this purpose there is the suspicion that we are still somewhat actuated by the spirit of vengeance. If a man

<sup>24</sup> *Op. cit.*, pp. 367-370.



is destroyed because he is dangerous to society we should not stop at the execution of murderers. Furthermore the plan is illogical. Is not, for instance, the sexual pervert or the insane or stupid perpetrator of arson liable to bring disaster upon an individual or a community far more grievous than the murderer of a single victim? Is not the father of criminals who is such by reason of degeneration or debauch as much a menace to society by reason of his potential criminality as any of his depraved progeny? Such being the case, are we not inconsistent when we support and pamper the one in an institution of mercy and hang the other whose life our misguided sympathy has made possible? If the death penalty is practiced at all it should be carried out logically for the extermination of all criminals who are proved to be a continual menace to society and not merely for a few special cases.<sup>25</sup>

A candid and well reasoned plan for the elimination of all persons who constitute a menace to society so great as to warrant extermination was advanced by McKim about twenty years ago.<sup>26</sup> It aroused such a storm of protest that it is obvious that society is not prepared for the adoption of such a method either of protecting society or of improving the human stock.

Another argument from expediency is that if society does not execute the murderer the mob will. So far is this from being true that lynching may be said to be most common in states which have the largest number of legal executions. Increase or decrease in legal executions cannot be shown to have any relation to the increase or decrease of lynching.<sup>27</sup>

C. *Net values of the death penalty.* Taking into consideration the merits of the death penalty in a particular case, several things may be said with certainty.

(1) The protection of society against the offender is assured. The man who is hanged steals no more horses. Ex-

<sup>25</sup> P. A. Parsons, *Responsibility for Crime*, pp. 88-89.

<sup>26</sup> *Heredity and Human Progress*, p. 249.

<sup>27</sup> E. H. Sutherland, *op. cit.*, pp. 371-373.



perience with life sentences indicates that the prospects of release are good. Murderers are being released from our prisons continually. Many of them repeat their crimes. In addition to this, lax methods of management make it possible for hardened and experienced offenders to escape from prison. The criminal potentiality of an escaped convict is high.

In reply to these arguments it may be said that there should be more rigid restriction of the pardoning power and greater precautions should be taken to prevent the escape of prisoners. With reference to the first of these suggestions it may be said that the underlying reason for the wholesale pardoning of offenders and for parole—which may mean the same thing—is economic. The best of governors and the most conscientious parole officers may weaken in time under economic pressure. Expediency needs no arguments.

(2) If there is a choice between painless execution and life imprisonment the former is probably more merciful to the offender under present conditions. Humane segregation is as yet an ideal unrealized, for criminals at least.

(3) Execution saves the state the expense of custody and support of the offender. Parole and pardon, however, do the same thing, for a time at least, and the state does not look far enough ahead to take into consideration the economic loss of future crimes and future trials and imprisonment. If the state should ever get a clear view of the economic aspects of the death penalty its use might be expected to increase considerably. There is probably no grave danger of this at present.

D. *Common objections to the death penalty.* The common and familiar objections to the continued use of the death penalty may be summarized briefly as follows:

(1) The dictates of humanity are against the taking of human life even in punishment.

(2) Mistakes of justice cannot be remedied.

(3) The use of the death penalty brutalizes the public, prison officials and other prisoners.

(4) Sadistic tendencies of a part of the population get an unnatural satisfaction out of executions, even from reading newspaper accounts.

(5) Executions stimulate the interest of sordid individuals and a depraved sort of hero-worship results.

(6) The death penalty causes an emotional attitude toward justice which demands a victim and then loses interest.

(7) Unwillingness of jurors to inflict the death penalty defeats the ends of justice and causes disrespect for law.

(8) Unwillingness of jurors to convict in murder cases makes conviction difficult and reduces the risks of murder.

To these should be added two arguments which are less familiar but of equal weight although more general in character.

(9) Capital punishment is a survival of a traditional and highly emotional system of repression. It is a confession of futility on the part of society. It represents an impasse for which society is largely to blame. It is the part of force rather than intelligence to resort to extermination.

(10) Society is now in process of working out a scientific program for dealing with crime in which extermination as yet should have no part. Should the time come when such a program requires the enlightened and sympathetic elimination of certain members of society for their own and the common good the practice should be stripped of the ensemble of notions now adhering to it.

3. *Imprisonment.* The use of the death penalty in the more highly civilized societies has dwindled to a mere vestige of its former extent. In fact its chief importance now lies in the ideas men have about it rather than in any practical considerations connected with its use. In the actual treatment of criminals it is a negligible factor. Less than one hundred persons are executed in the United States annually. Modern society, until quite recently, has placed its reliance principally upon imprisonment.

Dismissing for the moment the ideas of repentance, expiation



and retribution, the modern prison seeks to accomplish three things. It attempts to hold secure persons who are dangerous to society, to reform such persons and to deter others from committing forbidden acts. It must be judged by the measure of success it attains in the performance of these acts.

A. *The prison as social protection.* Theoretically, at least, we put in prison those persons whom society considers it unsafe or inexpedient to leave at liberty. To this end we take extreme precautions, by means of high walls and armed guards, to hold them securely while they are in custody.

Extreme precautions, however, are taken only with those persons who are considered most dangerous. The ordinary jail is a poor excuse for holding fast persons who are really anxious to get away. The penitentiaries provided by counties in Eastern states take on more of the formidable characteristics of the state prisons. Extreme precautions for holding the prisoners are not necessary, however, as many of them do not want to get away, especially in the winter. Most of them are on very short sentences and rarely are many of them desperate or dangerous men.

In the state prisons a large percentage of the convicts are confined for only a few years and good behavior shortens the sentence to such an extent that most of them prefer to serve the minimum to incurring the risks of attempting to escape. The desperate men, therefore, against whom the greatest provision for safe keeping must be made are a relatively small number of long term men and "lifers" who prefer taking the risks of escaping to spending the rest of their days in prison.

In 1920 there were approximately 3000 jails in the United States. One-fifth of these were municipal jails and four-fifths were county jails.<sup>28</sup> From two-thirds to three-fourths of all convicted criminals serve out their sentences in jails.<sup>29</sup> The average length of detention for these is about six weeks while

<sup>28</sup> Census Report for 1910, *Prisoners and Juvenile Delinquents in the United States*, pp. 203 ff.

<sup>29</sup> *Ibid.*, p. 23.



many sentences are for as little as ten days and the maximum jail sentence which can be imposed in most states is two years. Furthermore, of the remaining one-third or one-fourth of the convicted criminals who serve their sentences in the state prisons, the majority are sentenced for only a few years. The actual length of time, therefore, during which the public is protected from each individual prisoner is relatively short and that *not till after he has committed a crime*.

The protective value of the prison may be viewed from another angle. Let us assume that on a given date there are 175,000 persons in prison in the United States. If we take the estimate that 2 per cent of the population is constantly criminal we should have about 2,200,000 criminals in America.<sup>30</sup> For the sake of easy mathematics and conservatism let us assume that the number is 1,750,000. If this number is approximately correct, and it probably is not far wrong, we have one in ten of our criminals in prison at any time and probably never more than that. Our prisons, therefore, by actually holding fast the offender are protecting us against one-tenth of our criminals. As far as actual restraint is concerned, the protective value of our prisons is negligible.

B. *The prison as a reformatory influence.* There are no reliable statistics to show the extent to which prisoners are reformed by their prison experience. The bulk of the men who do time in jails are committed over and over again. According to men who have had intimate associations with criminals, the abandonment of a career of crime is usually in spite of punishment and not on account of it. Even where men "go straight" after release there are other factors than the punishment to be taken into consideration. It is probable that most criminals who grow old outgrow their criminal tendencies. Crime is a young man's game. There are easier ways of living at the expense of society and ways which are safer for an old man. It is probable that the percentage of single offenders who return to honest lives after prison would be as great or greater if they

<sup>30</sup> Hoag and Williams, *Crime, Abnormal Minds and the Law*, pp. 7-8.

had not been imprisoned. A committee appointed to study the English prison system had the following to say regarding reformation:

“In almost every case of a prisoner being ‘reformed,’ the result seems to be due to one or other of these causes, or to a combination of them. It is either owing to the spontaneous moral aspirations of the offender himself, expressing itself in spite of the régime; or else the change is to be attributed to the effects upon him of the shock of arrest and to other antecedents of prison, effects which . . . would probably be more surely produced by other means . . . or it may be due to the good influence of some personal friend or helper, with whom the prisoner has come into contact at or soon after his discharge.”<sup>31</sup>

C. *The prison as a deterrent.* Without going into a discussion of the deterrent value of imprisonment as over against that of other punitive methods, there is abundant evidence that criminals who get to state prison have given little thought to the consequences to themselves of their crimes. Forty-seven per cent of all prisoners admitted to the prisons of New York State in 1921 were recidivists and so were sixty-six per cent of the admissions to Sing Sing studied by Glueck. These men at least were not deterred from committing crime by their first prison experience. A more adequate system of identification will probably reveal the percentage of recidivists to be considerably higher. Undoubtedly a number of criminals are able to conceal their identity and are listed in the prison records as first offenders. Many convicts now have long prison records beginning with reform school.

D. *Disastrous effects of the prison.* The evils of the prison system have been clearly understood for more than a generation. The following pointed paragraph by Drähms represents the consensus of opinion at the beginning of the present century.

“The prison from every point of view, is the chief ostensible

<sup>31</sup> S. Hobhouse and A. F. Brockway, *English Prisons Today, Being the Report of the Prison System Enquiry Committee*, p. 500.



promoter of every ill it essays to cure, and offers the main incentive to crime in the objective and exemplary inducements it holds out thereto by virtue of the congregate system of indiscriminate herding together of all classes of offenders. Hence, it is safe to say, it succeeds in turning out more direct results in the shape of confirmed criminals, hardened to the contemplation of theoretic vice in all its forms and degrees, ready to put their knowledge into practice, than any other accredited agency within the range of experience or devised by the folly of man, resting on the consent of the masses.”<sup>32</sup>

There is no reason to believe that there has been any notable change in the effects of the prison upon its inhabitants since these lines were written. Sutherland has made a convincing collection of opinions of convicts, prison authorities and others connected with prisons and of eminent persons who have made a study of prisons and their work.<sup>33</sup> Opinions from all of these sources may be summed up in part as follows:

- (1) The prison confirms the criminal habit in first offenders.
- (2) Inmates are embittered against society by their prison experience.
- (3) A prison record bars the door to future opportunity.
- (4) Popular notions of reformations in prison are not shared by prisoners or any persons connected with prisons.
- (5) Most prisons and reformatories are schools of vice.
- (6) An absolutely innocent person put under prison conditions would develop anti-social tendencies.
- (7) If society designed to conduct a system of schools for crime it could not succeed better than with present methods.
- (8) Prisons and reformatories are a makeshift and will be continued only until society devises better methods.
- (9) No person who is reformable should be sent to a reform school.
- (10) A thousand persons are injured in prison for every one that is helped.

<sup>32</sup> A. Drähms, *The Criminal*, p. 193.

<sup>33</sup> E. H. Sutherland, *Criminology*, pp. 417-420.



(11) There is nothing to commend the prison except that it is a method easily applied to large numbers.

E. *Important reasons for the failure of the prison.* There are many reasons for the failure of the prison system of which we shall state only a few of the more outstanding ones.

(1) For the most part, a prison population is made up of inferior individuals whose life experience has not been calculated to make the best of their limited capacities.

(2) These inferior and unfortunate individuals are herded together under conditions which make for depression rather than for uplift or improvement of outlook.

(3) The entire prison discipline is repressive and produces negative and hostile reactions in the inmates.

(4) The discipline and atmosphere of repression seem to be dictated by the necessity of preventing escape, thus making constructive individual efforts practically impossible.

(5) The attitude of officials and keepers toward the inmates is hostile and suspicious.

(6) The character of the work, the low pay and the interference of politics prevent in most instances the securing of the right type of personnel.

(7) Guards and keepers are depraved by the character of their work.

(8) The prisoners are cut off from all normal and healthful social contacts and develop abnormal attitudes toward society.

(9) Prison inmates develop a public opinion of their own in which crime is condoned and society is conceived of in the role of the oppressor.

(10) A prisoner's entire experience in prison unfits him for participation in society.

#### IV. CONCLUSIONS ON PUNISHMENT

Viewed from the standpoint of social utility, we may dismiss from our consideration the use of punishment for purposes

of expiation, retribution and penitence. While it may not be possible to demonstrate that there is an actual increase in the amount of crime, it is obvious that we have not been able to diminish it by our repressive measures. Therefore, these measures are not giving us adequate social protection.

We need not enter into an academic discussion of the psychology of deterrence. Obviously the persons who commit crime are not deterred. Society has been obsessed since the beginning of the Middle Ages with the fear of what would happen if punishment were stopped. But society has abandoned most of its ancient methods of repression without disastrous results. No doubt there would be a certain amount of anarchy if all repression were removed. It is obvious, therefore, that the chief value of punishment as a deterrent lies in its influence upon a certain number of individuals who no doubt would commit crime were it not for the fear of the consequences. Just what the extent of potential criminality is we have no way of knowing. That we must perpetuate punishment for the sake of guarding society against it is not demonstrated by social experience. There is reason to believe that something other than punishment might accomplish the same end just as effectively,—something which might perform the practical tasks of dealing with actual criminals much more efficiently.

The effort to secure reformation by the infliction of pain has not been a success. Indications are that we are having success about in proportion to the extent to which we have abandoned it. Perhaps punishment and reformation are mutually exclusive. Professor Meade finds that "the two attitudes, that of control of crime by hostile procedure of the law, and that of control through comprehension of social and psychological conditions cannot be combined. To understand is to forgive, and the social procedure seems to deny the very responsibility which the law affirms, and, on the other hand, the pursuit by criminal justice inevitably awakens the hostile attitude in the offender

and renders the attitude of mutual comprehension practically impossible.”<sup>34</sup>

If it is cure that is desired, intelligent treatment is the method, and it should be continued till the cure is affected. If cure is not attainable and segregation is necessary it should be permanent. The ends of cure are defeated by punishment. And segregation solely for the purpose of social protection is not punishment. The infliction of pain without a purpose is cruelty.

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<sup>34</sup> G. H. Mead, "Psychology of Punitive Justice," *Amer. Jour. Sociol.*, March 1918.



## XVI

### REFORM OF PENAL INSTITUTIONS

#### I. THE PROBLEM

A GLANCE at the history of crime and its repression reveals some interesting tendencies. We have seen that crimes were relatively few in primitive society and that the reaction to them was swift and effective. With the early development of civil society there seems to have been a rapid increase in the amount and violence of crime. This was accomplished by increasing cruelty and vindictiveness in methods of repression. With the beginning of modern times, however, a change is noticeable in the character of crime and in society's attitude toward it. Hall's study of the relation of crime to social progress indicates that there has been a steady increase in the amount of crime during modern times but it also indicates that there has been a steady decrease in the amount of crime involving force or violence.<sup>1</sup> Drähms comes to the same conclusion.<sup>2</sup>

The last few centuries have seen a pronounced tendency to modify the harshness of punishment. Torture and mutilation have all but disappeared. The death penalty has been resorted to with increasing reluctance until it is employed for but a few crimes and for these very seldom. Corporal punishment in connection with imprisonment has disappeared except for disciplinary purposes in the institutions.

At the present time the prison is the chief reliance of society for the repression of crime. This institution is now under suspicion and is in process of transformation. The forces which are affecting it, however, are not new. They have been in op-

<sup>1</sup> A. C. Hall, *Crime in Its Relation to Social Progress*, chap. I.

<sup>2</sup> A. Drähms, *The Criminal*, chap. X.

eration for several centuries. In order to secure a clearer understanding of what is taking place in our attitude toward penal institutions, therefore, we may profitably follow the development of prison reform in Europe and the United States.

## II. THE BEGINNINGS OF PRISON REFORM

The beginnings of prison reform occurred as a result of the unspeakable conditions which developed in the jails.<sup>3</sup> We have seen how these became the dumping places of all sorts of human wreckage with little thought for the fate of the unfortunates who were confined in them. They were usually small and unsanitary with practically no provisions for comfort or convenience. They were invariably overcrowded. The inmates were clothed in rags and covered with filth. At night each occupied a space eighteen inches wide and as long as his person, all of the available floor space being covered in this fashion.

The prisons were originally communal, and unrestricted communication was permitted among the prisoners,—male and female. The prisoners' families were allowed to visit them during the day and friends, including prostitutes and burglars, spent much of their time there. Fresh crimes were planned there, and sometimes, for the payment of a small fee, keepers would permit notorious criminals to go out and execute them, after which they returned to the prison for safety. These conditions persisted for centuries.

Perhaps the first definite step in the direction of reform of the jails was the purchase by the state of the right to keep them. Until that time they had been private institutions conducted for profit. Under the private system the owners and operators of jails frequently became rich on fees extorted from their wretched charges who were forced to pay for nearly everything they required. The office of jailer was coveted and the right to keep the jail was frequently bought and sold as a business would be. In 1561 such an office was bought for 5000

<sup>3</sup> H. E. Barnes, *The Repression of Crime*, chaps. II-IV.

pounds and the income from some of the larger jails sometimes amounted to 4000 pounds a year. Finally the right to keep the jails was bought by the crown for 10,500 pounds. This put an end to some of the gravest abuses incident to the greed of private operators.

Agitation for the correction of conditions in the prisons of England began about the middle of the sixteenth century. A great impetus was given to the movement by the publication in 1618 of Mynshal's comments on prisons and prisoners which were written while he was imprisoned for debt. According to Wines, this is the first regular treatise on prison abuses.<sup>4</sup> He describes practically the same conditions as those found by Howard a century and a half later.

The next event of importance was the organization of the Society for the Promotion of Christian Knowledge in 1699. This organization appointed a committee on prisons which made a study of the prisons of London and reported in 1702. The report included a list of the abuses which seems to indicate that some of the older abuses had already disappeared. This report is notable because it advocates the abandonment of the congregate system in favor of solitary confinement in cells, labor while in prison, regular religious services, abolition of fees, prohibition of liquor in prison and certain devices for rehabilitation after release.<sup>5</sup> The first recognition of these recommendations came nearly three-quarters of a century later in 1773, with the authorization of magistrates to appoint chaplains in their jails.

Cellular confinement was authorized by Parliament in 1778 but it was a long time before cells were actually constructed in the prisons.

### III. FORERUNNERS OF THE MODERN PRISON

In 1716 a house of correction was established at Waldheim which contained the following features. Paupers and orphans

<sup>4</sup>E. H. Sutherland, *op. cit.*, p. 328.

<sup>5</sup>*Ibid.*, pp. 328-329.



were separated from criminals. The sexes were separated in both groups. Work was provided and was compulsory. Prisoners were required to maintain silence. A chaplain, a teacher and a physician were included in the staff of the institution. The famous house of correction at Ghent was established in 1775. This institution used practically all the essential principles of modern penology.<sup>6</sup>

#### IV. JOHN HOWARD AND ELIZABETH FRY

A sketch of prison reform would be incomplete which did not consider the work of two outstanding figures in the movement for prison reform in England. To John Howard and Elizabeth Fry is given much of the credit for reform movements of the latter part of the eighteenth century and in the early part of the nineteenth.

John Howard was born in 1726. When he was sixteen years of age his father died leaving him a considerable estate. His interest in prisons resulted from his experience as a prisoner in France. He became sheriff of Bedford in 1773 and immediately set about improving the conditions in his prison. He was shocked by the fee system. In this connection he discovered that persons who had been confined in the jails and against whom the grand jury had not returned an indictment were held in jail because of their inability to pay the fee for release. He was unable to find a precedent for charging this fee to the county although he made an investigation of practically every county in England. He then laid his information before the House of Commons and was thanked for his zeal in collecting the information and for bringing it before the House. In consequence a law was passed in 1774 providing for the liberation, free of all charges, of every prisoner against whom the grand jury failed to find a true bill, giving the jailer a sum from county taxes. As a result of his influence another law having

<sup>6</sup> E. C. Wines, *The State of Prisons and Child Saving Institutions in the Civilized World*, pp. 10-11.

to do with sanitation in the jails was passed. This law he published at his own expense and distributed to all the jailers in England.

In 1775 Howard traveled extensively in France, Germany and the Low Countries, making a study of prison conditions wherever possible. He returned to England and was instrumental in securing the passage of a law for solitary confinement in 1778. In 1777 he published his book, "The State of Prisons in England and Wales," which was a great factor in prison reform for half a century. His general conclusion regarding the state of the prisons was as follows:

"If it were the wish and aim of magistrates to effect the destruction present and future of young delinquents, they could not devise a more effectual method, than to confine them so long in our prisons, those seats and seminaries . . . of idleness and every vice."<sup>7</sup>

The purpose of the penitentiary law of 1778 was stated to be "by sobriety, cleanliness, and medical assistance, by a regular series of labor, by solitary confinement during the intervals of work, and by due religious instruction to preserve and amend the health of unhappy offenders, to inure them to habits of industry, to guard them from pernicious company, to accustom them to serious reflection and to teach them both the principles and practice of every Christian and moral duty." Howard had the assistance of Blackstone in framing this law.

Elizabeth Fry was ten years old when John Howard died in 1790. Under the preaching of William Savery, an American Quaker, who visited Norwich when she was a girl, she became a member of the Society of Friends, or Quakers. She married Joseph Fry in her twentieth year and became a minister in the church in 1811. Her interest in prisons and prisoners came about almost by accident.

In the winter of 1813 she was invited by a member of the Society of Friends to help allay the sufferings of the prisoners in

<sup>7</sup> John Howard, *The State of the Prisons in England and Wales*, 2nd edition, p. 13.



Newgate Jail. What she saw there made a profound impression upon her. Her first efforts were to read the Scriptures to the prisoners of Newgate in the hope of reforming them. She then secured permission and the assistance of the keepers to fit up an empty room as a school-room. A teacher was employed and classes were opened for all persons under twenty-five years of age. She next organized an association of twelve persons to assist her and an additional room was secured and instruction in sewing was given to the women. A condition for admission to the studies was that all begging, gambling and profanity must cease. Proctors were appointed to enforce these rules.

Report of Mrs. Fry's work at Newgate spread to London. After an inspection of the transformed prison by the mayor of London with his sheriffs and aldermen, the whole system was adopted for the city of London.

In a short time Mrs. Fry found herself the center of a movement for reform which spread over Europe. Her participation in the work was considerably curtailed by the failure of her husband's business. In spite of this she inaugurated a movement for the benefit of discharged prisoners and for the children of criminals and of the poor. As a result of her travels and lectures a great impetus was given to the movement for reformation of offenders, especially through education.

## V. PRISON REFORMS IN THE UNITED STATES

Due credit must be given to the Quakers for the development of prison reform both in England and in America. They were a very early influence in the Colonies for the mitigation of severe penalties.<sup>8</sup> They were responsible for the introduction

<sup>8</sup> H. E. Barnes, *History of the Penal, Reformatory, and Correctional Institutions of New Jersey*, chap. I; "The Criminal Codes and Penal Institutions of Colonial Pennsylvania," in *Friends Historical Bulletin*, 1921-22; and "The Place of the Pennsylvania Prison Society in American Prison Reform," *Prison Journal*, 1922. Also *The Repression of Crime*, chaps. II-IV.



of labor in the prisons in West Jersey in 1681. They were responsible for the inauguration of the *penitentiary* movement in connection with prison reform in Pennsylvania.

The state prison movement was to have a rapid development in the United States because the definite revulsion against the wholesale use of the death penalty had set in before the War of Independence. The prisons came into existence mainly because the states did not know what else to do with hardened and dangerous offenders. Connecticut led off in 1773 by purchasing an old mine and converting it into a state or colonial prison in which many of the common vices of the English prisons developed. It served as a state prison until 1827. Massachusetts converted an old military post in Boston Harbor into a prison in 1785. The following states built prisons in the years indicated after each: New York, 1796, New Jersey, 1798, Virginia, 1800, Vermont, 1808, Maryland, 1812, New Hampshire, 1812, and Ohio in 1816.

The grave abuses which had characterized the colonial jails developed in the prisons and in each state there is a history of the struggles of the reformers against the familiar conditions already revealed to the public in England.

## VI. THE PENNSYLVANIA SYSTEM

It is said that prison reform in the United States began in Philadelphia.<sup>9</sup> The Philadelphia Society for Reforming Distressed Prisoners was founded in 1776. On account of the Revolutionary War it had little influence on legislation until 1790. At that time a law was passed authorizing the construction of cells in the Walnut Street Jail yard in which "hardened and atrocious offenders" were to be confined. The Quakers, because of the nature of their religious beliefs, were convinced that solitary confinement would be conducive to meditation and repentance on the part of the offender. It would

<sup>9</sup> L. N. Robinson, *Penology in the United States*, p. 70; H. E. Barnes, in *Prison Journal*, 1922.

also prevent the contamination due to association with other criminals, which was recognized as one of the gravest evils of the congregate system. On the whole, they set great store by the possibility of spiritual regeneration in the prisoner as a result of his meditations. He was to be provided with materials and tools for doing useful work and was to have instruction in it if necessary.<sup>10</sup> There is a dispute as to whether this work was regularly provided from the first. It is claimed that the reformers were hesitant to provide work for fear that the prisoners might become preoccupied with it and the benefits of uninterrupted meditation might be lost.<sup>11</sup> To counteract possible disastrous effects of solitude, officials and influential citizens were to visit the prison periodically and converse with the prisoners in their cells. These conversations, when they occurred, were chiefly on theological matters.<sup>12</sup>

The new departure in the Walnut Street Prison was the center of great interest and its plan was copied in Maryland, Massachusetts, Maine, New Jersey, Virginia and other states. The movement in New Jersey is of interest because of its relation to other developments which we shall discuss presently.

It was probably due to the early influence of the Quakers of West Jersey as well as the Philadelphia experiment that an agitation began in the State of New Jersey in 1802 over the evils of the congregate system. Recommendations were made to the legislature in favor of the cellular plan in 1802 and again in 1817. In 1818, ten years before the opening of the famous Eastern Penitentiary of Pennsylvania, the inspectors of the state prison presented a memorial to the legislature in February in which they expressed their opinion of the proposed method of segregation or solitary confinement as follows:

“This, with due deference to your honors, would, we conceive, be the most effectual means of blessing the number of convicts

<sup>10</sup> L. H. Robinson, *op. cit.*, p. 71.

<sup>11</sup> E. H. Sutherland, *Criminology*, p. 396.

<sup>12</sup> H. E. Barnes, “The Historical Origins of the Prison System in America” in *Journal of Criminal Law and Criminology*, May, 1921.



sent for high crimes, as the circumstances of separate confinement would soon get abroad among that class of society, which would, no doubt, prevent a number from violating our most excellent laws, and would ultimately, we have no doubt, be the means of bringing about a reformation in those who should unhappily become the subjects of such a mode of punishment.”<sup>13</sup>

This led to the construction of a new building which was completed in 1820. In 1821, 21 out of 99 prisoners were kept in solitary confinement, which was authorized for persons convicted of arson, manslaughter, rape, blasphemy, perjury, burglary, robbery, forgery, assault, theft of more than fifty dollars, and house-breaking. By 1826 the system of solitary confinement was declared to have been a failure. The committee in making its report declared that the morals of those in solitary confinement showed no improvement, that this confinement offered no possibility of acquiring valuable habits of industry or skill in manual labor, and left the discharged prisoner with little opportunity to do anything but return to his occupation of crime. The ideal prison system was said to consist in employment at hard labor in the congregate system by day and solitary confinement by night. “There was thus presented,” writes Barnes, “at this early period a criticism of what was to be known as the Pennsylvania system of prison regulation and administration, and a recommendation and adoption of what later came to be known as the Auburn system.”<sup>14</sup>

The recommendation of solitary confinement by night and the prevention of conversation during the congregate work by day was enacted into law in 1828.

## VII. THE AUBURN SYSTEM

New York, in common with a number of other states, became interested in the Pennsylvania plan and sent a commission to

<sup>13</sup> H. E. Barnes, *Report of the Prison Inquiry Commission* (New Jersey), Vol. II. p. 68.

<sup>14</sup> H. E. Barnes, *Ibid.*, p. 70.



Philadelphia to study the system in 1794. In consequence of this visit some modifications were made in the New York Law of punishments but the cellular idea was not embodied in the prison which was built in New York City in 1797. In 1816 the legislature authorized the construction of a second state prison at Auburn which was to make provision for confinement of prisoners in cells. A plan was authorized for the use of these in 1821 by which the more hardened offenders were to be confined in the cells all of the time, a second group were to be confined three days a week and the others only one.

The disastrous results of the solitary confinement in Auburn were manifested quickly and convincingly. Of eighty prisoners who were kept in solitary confinement continuously all but two were out of the prison at the end of two years as the result of insanity, death, or pardon. As the result of the recommendation of a commission which was appointed to investigate the conditions in the prison the plan of continuous solitary confinement was abandoned in 1824.<sup>15</sup>

The plan then adopted was that of congregate work in silence during the day and solitary confinement in cells at night. This plan came to be known as the Auburn system.

### VIII. SUBSEQUENT DEVELOPMENT OF AMERICAN PRISONS

Two definite plans for prison construction and management were now before the country. Both had their ardent advocates. The Pennsylvania system with its plan for the isolation of the offender where he might repent in solitude caught the imagination of many of the humanitarians who were shocked by the horrors of the old congregate system. Then, too, the matter of ease of management and the security of the plan had their appeal. Cellular confinement offered no opportunity for the prisoners to escape and prison help could be reduced almost to a corps of menials. To be sure, the forms of labor which

<sup>15</sup> E. H. Sutherland, *op. cit.*, p. 397; Barnes, in *Journal of Criminal Law and Criminology*, May 1921.

could be undertaken in the cells were not numerous and the system did not permit of the use of mechanical power. The labor must be some sort of handicraft where each workman would have his own tools and more or less complete his task. An argument in favor of such occupation was that the handicraft labor afforded better reformatory influence than working in a shop with machinery. Fashioning and finishing the entire product was supposed to appeal to some latent instinct for useful achievement and to revive the ambitions of the convict.

In the minds of the advocates of the Pennsylvania system its spiritual values offset its economic disadvantages. It was at this period that the idea of reforming the offender was beginning to assume an important place in punishment along with retribution. Half a century later it was to supersede retribution and lead to still greater modifications of penal institutions and methods.

The advocates of the Auburn system felt that solitary confinement of prisoners by night and silence at labor by day would have the same salutary influence upon the convict as the Pennsylvania plan without its serious drawbacks. The workshop combined the advantages of making the work of the prisoners economically profitable, giving them wholesome exercise and of teaching them trades which would enable them to make an honest living after their release.

The controversy which arose over the merits of these two systems of penal management and discipline was destined to be waged bitterly for more than a generation. The Pennsylvania system was adopted in a few American States and became the general pattern for European prisons. The disadvantages of the system, however, were manifested in a short time and the experience at Auburn, where it was abandoned after a few years of trial, gave the ascendancy to the Auburn plan. In fact, the state of Pennsylvania came near abandoning its own system at an early date. It was inevitable that the Walnut Street Prison in Philadelphia should become inadequate to serve the needs of the entire state and early in the nineteenth century



agitation began for a state prison. On account of the comparative isolation of the eastern from the western part of the state it was finally decided to build two prisons. The Western prison or penitentiary as it was called was built in 1818 and the famous Eastern Pennsylvania Penitentiary was constructed in 1821. The opposition to the Pennsylvania system became so powerful, however, that in 1827 a legislative committee advocated its abandonment in favor of the Auburn plan. Friends of the system were so powerful that it was retained in the new prisons. It was eventually abandoned in the Western Penitentiary in 1869. It was not finally abandoned in the Eastern Penitentiary until 1913.<sup>16</sup>

## IX. DEVELOPMENTS IN PRISON LABOR

As we have seen, prison labor was inaugurated as early as 1681 by the Quakers. Hard labor was imposed as a form of punishment and the rock-pile is still retained for disciplinary purposes alone. Prison labor early took on a variety of forms and frequently degenerated into nothing more than the use of prisoners in the upkeep of the buildings. Mention was from time to time made of the regenerative character of labor and of the desirability of inculcating in the prisoner suitable habits of work, but actually prison labor has never been given its due position as one of the chief means of vocational and social rehabilitation of the criminal.

Various practical difficulties arise when labor is introduced into the prison. Many of these will be made clear by a summary of the major forms of labor now in use in the United States. The six primary systems of prison labor are the lease system, the contract system, the piece-price system, the public-account system, the state-use system, and the public works and

<sup>16</sup> For discussions of the two systems see L. N. Robinson, *Penology in the United States*, chap. V; E. H. Sutherland, *Criminology*, pp. 296-298; and for their application in New Jersey, H. E. Barnes, *New Jersey Penal Institutions*, chaps. III and IV.



ways systems.<sup>17</sup> The chief difference is in the extent to which private interests control the prisoner, either his labor or his product or both.

1. *Lease system.* The lease system derives from the old English practice of farming out the jails and represents the most extreme form of control by outside interests. The lessee houses, clothes, feeds and guards the prisoners, paying to the government a stated sum and receiving in return the right to work the prisoners and to control the products of the prisoners' labors. The advantages here lie in the simplicity of administration and the fact that the state makes money. However, frightful tales have come out of prison camps where the ideal is often the destructive one of minimum existence and maximum effort for the prisoner, so that there can be no wonder that after this experience of enslavement the prisoner returns to society a greater menace than before. Fortunately the lease system is definitely disappearing.

2. *Contract system.* Under the contract system an outside party, the contractor, commands the labor and the products of the prisoners, while the government cares for the prisoners. Workshops are usually furnished rent free in the prisons, the contractor being expected to bring machinery and raw materials. The government attends to the discipline while the contractor pays so much per day for each prisoner employed. The advantage of this system are primarily negative, as it does not require business ability from the prison officials nor humanitarianism from the contractor. Thus it is a slight improvement over the lease system. However the system costs more, the prisoners are subsidized by the government and competition with free labor is unjust.

3. *Piece-price system.* Under the piece-price system there is a still further relaxation of the control by private interests. The contractor furnishes the raw material and pays the government so much per piece for making it up. This system

<sup>17</sup> L. N. Robinson, *Penology in the United States*.

eliminates the conflict of authority which is inevitable under the contract system.

4. *Public-account system.* With the public-account system we have a clear-cut break with private interests. The government buys the raw material, markets the product, and takes the position of an *entrepreneur*. This system introduces the difficulty of securing a business man for the head of the prison.

5. *State-use system.* Here the government is both producer and consumer. The goods cannot be sold in public markets but are used by the state institutions. From point of view of simplicity of machinery the public-account system is preferable to this, although the labor unions prefer it because of the elimination of competition.

6. *Public works and ways.* This is really a form of the state-use system. The prisoners must be moved about from one piece of work to another, the guarding becomes a difficult problem while positive influences for reformation are likely to be lacking in prison camps. However, there is an improvement of the health of the prisoners from work in the open air and it is comparatively easy to secure appropriations from the government for this kind of work.

It is not uncommon to find several systems within a single state but there is going on a definite shift toward the public-account and state-use systems of prison labor. Henderson looks forward to the time when we may have self-sufficing penal institutions where mechanical trades are taught and tasks are made educational. At the present time, however, there is practically no connection between the work the prisoner is given to do in the prisons and the life he may be expected to lead outside. The training of shoe-making by one state institution is a case in point. Excellent shoe-makers were released on probation with a limited freedom, the only shoe factory being outside the bounds to which they were limited.

We are only recently beginning to perceive the great importance of individual differences in school life and the indus-



trial world, so it is natural enough that the psychology of individual differences should have been almost completely neglected in the development of prison labor. New Jersey, with its psychologists attached to the prison system, has taken a step toward the personal development of the individual prisoner. Analysis of the individual's capacities, re-training or further training and finally placement and follow-up work outside the prison is the program necessary to return the criminal as a useful member of society. As Henderson says: "It is peculiarly necessary to find the right work for a prisoner, for, if he cannot be definitely placed in industry on his release, there is great likelihood that he will return to crime. No state can afford to neglect this opportunity to protect itself and to save a man."

In a survey of history of prison industries in Pennsylvania <sup>18</sup> Barnes points out the relation of the form of prison industries to the economic development of the country as a whole, concluding that "the industrial phases of American penology cannot be interpreted aright without a knowledge of the underlying tendencies in economic history and the principles of economics. Technology, organization of industry, labor policies, and systems of maintenance are all inseparably bound up with economic history and doctrine. The greatest weaknesses of economic penology, as well exemplified by the history of the Eastern Penitentiary, have been exhibited when penal institutions have departed or held aloof from prevailing economic tendencies or sound economic principles. . . . No sound economic doctrine would have sanctioned either the excesses of the attack of labor organizations upon convict labor or the capitulation of legislators to this assault. Nor could one expect an economist to sanction a law which looked forward to the provision of a supply of a definite type of commodities without insuring the possibility of an adequate demand for them. Finally, the prob-

<sup>18</sup> H. E. Barnes: "The Economics of American Penology as illustrated by the Experience of the State of Pennsylvania," *The Journal of Political Economy*, vol. xxix, No. 8, October 1921, pp. 617-642.



lems of reformation, economic or technical education, after-care of discharged convicts, the relation between criminality and economic pressure, the support of relatives of convicts, and restitution to injured parties are matters which fall within the province of the welfare economist."

Up to the present time there has been practically no attempt to attack the problems of prison labor from the standpoint either of sound economics or sound psychology. In a paper read before the Taylor Society Fryer points out the need of the industrial psychologist's entering this field and working out a system of prison labor which will be capable of realizing the objectives of the civil and industrial rehabilitation of the criminal.<sup>19</sup>

## X. REFORMATORIES AND TRAINING SCHOOLS

Early in the nineteenth century the advocates of reformation were shrewd enough to realize that youthful offenders offered greater prospects of successful treatment than did the older and more hardened criminals. Much of the callousness and obduracy of the older prisoners was rightly attributed to experience gained in prisons in their youth. It was natural that as this began to be realized there should develop a movement for the segregation and specialized treatment of juvenile offenders.

"The idea of special institutions for juvenile delinquents or for those about to become such, is neither new nor of American origin."<sup>20</sup> Houses of correction had made their appearance in England and on the Continent in the sixteenth and seventeenth centuries. In these appeared efforts to segregate the young from the old and to instruct them rather than to punish. It is now over a century since the first juvenile reformatory was established in America. The New York House of Refuge

<sup>19</sup> D. Fryer, "Psychology and vocational Guidance for the Prisoner," *The American Review*, March 1926.

<sup>20</sup> L. N. Robinson, *op. cit.*, p. 92.

was started as a private philanthropy on January 21, 1825. Boston established a similar institution in 1826 and in 1828 Philadelphia opened a separate department in its house of correction as a reformatory for juveniles, which a few years later was removed to a separate building. Children were committed to these institutions during minority. The treatment was reformatory rather than punitive. Though the children were expected to work for longer or shorter periods in shops to contribute to their support, schools were conducted for the inmates from the start with grades for children of different intellectual attainment and deportment. In Boston and in New York a system of partial self-government was employed which foreshadowed the plan of the George Junior Republic.<sup>21</sup>

A fourth institution of this character was opened in Baltimore in 1849 and several others appeared in 1850. The next quarter century saw the opening of thirty-two similar institutions and sixty-six more appeared before the end of the century.

1. *Management and control.* The New York House of Refuge was a private philanthropy. The Boston experiment seems to have been in connection with a public institution, financed as a municipal enterprise. In Pennsylvania the Western House of Refuge was started by private individuals but received aid from surrounding counties. The Lyman School for Boys, established in 1847, was a Massachusetts state institution but it received large private gifts at its inception. On the whole the history of the reformatories seems to indicate that they were started largely as private philanthropic enterprises to which the state turned for a solution of its juvenile problem. Public and private funds were combined even where institutions were under private control. The following types of schools have existed, therefore, from the beginning of the movement in America:

A. Private reformatories.

B. Private reformatories to which children are committed by the courts, subsidized by municipalities, counties and states.

<sup>21</sup> *Ibid.*, p. 94



C. Public reformatories owned and operated by municipalities, counties and states.<sup>22</sup>

It may be said that there has been a steady development in the direction of public control and state institutions. Quite generally the private institutions which receive public funds have come under the supervision of prison commissions and child welfare commissions or boards of children's guardians. In a number of states all child-caring institutions, public and private, subsidized or unsubsidized, have come under the supervision and a measure of control of some sort of state commission.

2. *Difficulties of the reformatories.* From the start the practical difficulties of the reformatories have been the chief obstacles in the way of their success. Chief among these have been the types of buildings, the form of management, and the occupation of the inmates.

A. *Structural difficulties.* Public and private reformatories alike have suffered from inadequate and improperly constructed buildings. Many private institutions began operations in improvised buildings. When they were forced to build more commodious quarters they were induced to build cheap buildings to accommodate large numbers,—rather, they were forced, often, to take care of much larger numbers than their buildings could accommodate properly. These two factors,—cheapness of construction and numbers of inmates,—also determined in part the character of the early institutions. As a result, most of them were not unlike the prisons in size and in the type of architecture. Many of them had the customary provisions for safety, such as barred windows and massive doors and walls. In consequence it was difficult to distinguish between some of them and the prisons save by the youthfulness of the inmates.

The larger institutions with their dormitories, workshops, school-rooms, assembly rooms and official quarters came to be known as the "barracks type" of institution. In some of these

<sup>22</sup> *Ibid.*, p. 96.



the evils of the penal institutions have persisted and the reformatory influence has been reduced almost to zero.

B. *Management.* In spite of their reformatory ideals, many of the earlier institutions inherited their methods of management from the prisons. Disciplinary ideas were still predominant. The internal organization was formal and adapted to the easiest method of controlling numbers. Facilities for education and recreation were inadequate. In many instances persons who conducted the institutions were more concerned with keeping down the per capita cost than they were in the physical well-being and spiritual condition of the inmates. The congregate system together with the lack of facilities for separating the younger from the older inmates not infrequently made these institutions schools of crime rather than reformatories. These difficulties have by no means been overcome.

C. *Occupation of the inmates.* Our frugal ancestors had two powerful biases in the direction of making labor of the inmates an important feature of institutional life. It was thought to be good for the children, and it kept down costs. In the earliest institutions, provision for the labor of the inmates was a most important consideration. Naturally many of the evils of child labor appeared in them. The children worked eight hours a day in the New York and Philadelphia institutions and five and a half hours a day in the Boston reformatory.<sup>23</sup> The children's institutions came under the evils of the contract system along with the prisons, and the inmates made brushes, cigars, shirts, shoes and the cane seats of chairs under contract as did the older prisoners. This practice persisted in some states till the latter part of the nineteenth century. In the hours that were left from labor the children were given a most elementary education.

It has been said that the absolute need for funds was the chief reason for the perpetuation of labor in the children's institutions, specially in those supported by private philanthropy. If this were true it is a severe indictment of the early philan-

<sup>23</sup> L. N. Robinson, *op. cit.*, p. 101.

thropists that they allowed parsimony to defeat the objectives of their bequests. This explanation, however, is of doubtful validity. The private institutions were soon subsidized by public funds and nothing but the meanness of tax-payers and the cupidity of politicians has been responsible for the inadequate financing of public institutions.

In addition to labor in the institutions, inadequate financing was responsible for improper management and inferior personnel in the reformatories. The salaries paid to superintendents and assistants have been uniformly too low to provide adequately trained persons. The persistence of antiquated methods, stupidity and even brutality in treatment resulted. Public apathy toward the institutions and the prevailing notions regarding child labor contributed to the perpetuation of these evils.

## XI. REFORMATION IN THE REFORMATORIES

Early efforts to overcome the evils of the reformatory institutions were in the nature of internal changes. More emphasis began to be laid on education and less on work. Finally work persisted mainly for its educational value and for the health and state of mind of the inmates. Reforms inside the institutions, however, were handicapped by the character of their constriction and the customary methods of management. In their efforts to get away from these difficulties, the reformers began to change the type of architecture, the form of organization and the occupation of the inmates. The newer reformatories, or training schools as they are coming to be called, are built like homes, managed like schools and labor is enforced mainly for training purposes.

A. *The Cottage plan.* One of the serious difficulties of the barracks type of institution was that of properly classifying the children in age, educational and sex groups. Efforts to accomplish this more perfectly and to escape from the bad influences of congregation of different age groups led to the adop-



tion of the "cottage type" of institution. The plan originated in Hamburg in 1833 as a result of a desire to provide a form of life for the children as nearly like that of the normal home as possible. This scheme involved greater expense for buildings and required more space than the older type of institution. It had the advantage, however, of being able to utilize a rural environment and of providing an opportunity for tilling the ground and working with animals, occupations which permit of more natural and wholesome surroundings than manufacture. Less provision was necessary for the safe keeping of the children in the cottages and the last traces of penal architecture disappears with the advent of the cottage institution.

This plan was followed for the first time in America in the construction of the boys' school at Lancaster, Ohio, in 1856. Separation of the sexes in separate buildings had long been in practice and Massachusetts established a separate reformatory for girls in 1858. It was not long before the cottage type of institution came to be considered the ideal type because of the possibilities which it offered for specialized treatment and for its adaptation for systems of discipline.

The cost of the cottage plan stood in the way of its complete adoption for a long time. In an effort to accomplish the desired ends at less expense a combination of the two types of institution has appeared which has been employed to a great extent. This plan provides living quarters for the children in cottages with congregate instruction and recreation and some industry, mostly agricultural, or as nearly as possible like that the children would enter outside the institution. Some institutions include congregation for eating also, though advocates of the cottage plan hold out for the cottage kitchen and meals served in the cottage.

B. *Educational motive.* With the adoption of the cottage plan or modified forms of it, the ideal of education and technical training has almost entirely superseded the older idea of punishment and productive industry. Labor now remains for



purely salutary purposes. The prison for children practically disappears in this type of institution.

In consequence of this development the management of cottage institutions bends its energies chiefly in two directions;—to provide as homelike and congenial environment as possible for the child, and to afford an education adapted as nearly as possible to the needs of the individual inmate.

## XII. EDUCATION AND CORRECTION

In 1828 the Supreme Court of Pennsylvania decided that the Philadelphia House of Refuge was a school and not a prison.<sup>24</sup> In spite of that fact, there has been little effort to develop correctional institutions in connection with the public schools, rather than the prisons, until quite recently. The final liaison between the educational and correctional institutions came about through the law of compulsory education. By this law truants became delinquents. For a long time they were sent to the houses of correction as other delinquents. In 1850 Massachusetts passed a law making truancy punishable by confinement in some "institution of instruction or house of reformation, or other suitable situation, as may be provided or assigned for the purpose." This law was widely copied. For a time children were committed under it to the jails and reformatories and even almshouses.

In time public opinion began to revolt against this practice. The result was the establishment of special schools for truants to avoid classing them with delinquents and to prevent their association with juvenile criminals. By 1884 Massachusetts had several truant schools.<sup>25</sup> In 1895 Boston opened such a school and called it a Parental School. These schools were under the control and management of the school boards. The parental

<sup>24</sup> D. S. Snedden, *Administration and Educational Work of American Juvenile Reform Schools*, pp. 12-13.

<sup>25</sup> L. N. Robinson, *op. cit.*, p. 113.

school movement gave much promise and has accomplished excellent results in several communities, but for some reason it has not been widely adopted. There has been a tendency for the parental schools to pass from municipal to state control. In 1914 the Boston Parental School was closed by act of the State legislature.

### XIII. THE GEORGE JUNIOR REPUBLIC

This brief account of the development of reformatory institutions in America would be incomplete without a description of the George Junior Republic. It was established in Freeville, New York, by William R. George in 1895.<sup>26</sup> Since that date this institution has become the pattern for at least a half dozen reformatories. The dominant idea of the institution is that of self-government. Participation in the conduct of the institution was conceived to be the best kind of moral training. Although the idea was not new it remained for Mr. George to make a thorough trial of it and to acquaint the public with its methods of operation. Largely as a result of his activities the self-government idea has been adopted in other institutions especially in connection with some form of honor system.

Two other features of the George Junior Republic were the mingling of boys and girls in the same institution and the inclusion of certain economic ideals in its system of education.

### XIV. REFORMATORIES FOR ADULTS

The use of the term "reformatory" in connection with the treatment of adult offenders signifies a third distinct method which has developed in America. The failure of the *penitentiaries* to reform prisoners and the confusion of the term with the word *prison* led to the development of a plan which was distinct from either the Pennsylvania or the Auburn system. The

<sup>26</sup> For a description of the institution and its methods see W. R. George, *The Junior Republic*.



same experiences which led to the specialization of institutions for juveniles also led eventually to the selection for special reformatory treatment of certain classes of offenders who by reason of their youth or absence of previous criminal experience were thought to be more amenable to reformatory influence than the older and more hardened offenders. Robinson defines a "reformatory" as a prison in which a state tries to reform selected adults by a system which is historically the third upon which good men have pinned their hopes.<sup>27</sup>

The use of the word "reformatory" in connection with institutions for adults must be carefully distinguished from its use in connection with juvenile institutions. The adult reformatory is a prison with a distinct reformatory purpose. The juvenile reformatory is not a prison but a highly specialized educational institution. It is probably on account of the associations which have developed in connection with adult institutions that the term *reformatory* has been almost entirely abandoned in connection with institutions for juveniles. These are coming to be called simply schools, or training schools and sometimes industrial schools.

Robinson traces the ideas embodied in the adult reformatory to its inauguration in 1840 in the English Penal Colony on Norfolk island.<sup>28</sup> From there it was adopted in the Irish Convict Prisons through which it became familiar to American penologists.<sup>29</sup> The first reformatory for adults in the United States was created by act of the New York Legislature in 1869 but it was not put into operation until 1876. Mr. Brockway who was to be the first superintendent drafted an indeterminate sentence law which was enacted by the legislature the year the reformatory went into operation.<sup>30</sup> This law provided that

<sup>27</sup> L. N. Robinson, *op. cit.*, p. 121.

<sup>28</sup> *Ibid.*, p. 122.

<sup>29</sup> M. Carpenter, *Reformatory Prison Discipline as Developed by the Rt. Hon. Sir Walter Crofton in the Irish Convict Prisons*.

<sup>30</sup> On Elmira Reformatory see Z. R. Brockway, *Fifty Years of Prison Service*, and F. H. Wines, *Punishment and Reformation*, revised edition of 1919, chap. X.



male offenders between the ages of sixteen and thirty, and not known to have been previously sentenced to a state prison or penitentiary on conviction for a felony in any state or country, might be sent to Elmira reformatory for a term not to exceed the maximum sentence which might under the New York Code be imposed for each offense of which they were found guilty.<sup>31</sup>

Work was under the contract system until 1888 when it was abolished in all New York State prisons. Brockway took advantage of the idleness forced upon his prisoners in this manner to install a system of physical training and to enlarge greatly his course in technical training. An educational course of a more cultural character which he had inaugurated in 1879 was also expanded at that time.

In addition to his educational programs Brockway introduced a marking system based on good-behavior and progress in training, the reward for which was a shortening of the time during which the prisoner might be confined. The prisoner entered a middle grade from which he might be promoted or demoted. As a reward for excellent behavior he might be released after having served only a relatively small part of the maximum sentence.

In addition to the above mentioned devices for bringing about reformation, a system of parole was employed which required that the offender must conform to certain requirements stipulated by his parole officer for a period of six months, after which he might be discharged from the reformatory.

## XV. SPREAD OF THE ELMIRA IDEA

The Elmira idea was copied widely in other states. There were twenty-nine reformatories for adults in America in 1921. These were located in eighteen different states. Eighteen of them were for men and eleven for women. The development of reformatories for men had been much more rapid than for women. Outside of New York, not a single reformatory for

<sup>31</sup> *N. Y. Laws, 1876, chap. 207, par. 4, p. 213.*

women was established before 1900.<sup>32</sup> There had been separate prisons for women in several states which afterwards developed into reformatories but none were definitely patterned after Elmira before that date. Iowa passed a law creating a women's reformatory in 1900 but no other state followed this example until ten years later. Since that time the development of women's reformatories has been rapid.

There has been a reluctance to commit women to prisons. Recently there has been a tendency to remove the age maximum and send all adult women to the reformatories. As a rule the states have clung to the practice of sending only felons to the male reformatories. There has been a general tendency, however, in the women's reformatories to admit misdemeanants as well as felons.

## XVI. THE PASSING OF THE ADULT REFORMATORY

In time many of the features of the adult reformatory were introduced into the regular prisons and the distinction between them and the reformatories became somewhat vague. To be sure there was the age limit in the reformatories but as 69 per cent of those admitted to the state prisons in New York were under thirty years of age, this distinction is no longer very marked. The development of a general use of the parole system, by which nearly all the less hardened offenders as well as a goodly portion of the more hardened ones are released after serving a part of the sentence from prisons as well as reformatories, has tended to reduce further the distinctions between the two institutions.<sup>33</sup>

## XVII. THE MUTUAL WELFARE LEAGUE

The Mutual Welfare League established by T. M. Osborne at Sing Sing in 1915 was the first systematic and fearless at-

<sup>32</sup> L. N. Robinson, *Penology in the United States*, p. 126.

<sup>33</sup> E. H. Sutherland, *Criminology*, p. 412.



tempt to institute a system of convict self-government. Despite its partial failure it is regarded by Barnes as the "most significant advance in American penology since the introduction of the Elmira system." Fifty convicts elected as delegates were held chiefly responsible for rules of discipline while from this group a board of five judges was elected to deal with infractions. The decisions of the judges were carried out by the regular officers of the prison, although appeal was possible to the warden. In the shops no guards were allowed and discipline was kept entirely in the hands of the convicts. The League developed a convict commissary, token money, an employment bureau, outdoor recreation, lectures and other entertainments.

The Mutual Welfare League "consisted in the practical application of the doctrine that a convict could not be trained for normal social life in the paralysing environment of the conventional repressive system of prison discipline, but required for this social education a set of surroundings calculated as much as possible to bring to bear the influences of normal life in a social group, and thereby to fix the inmate for such an existence upon the expiration of his sentence."<sup>34</sup>

The success of such a convict democracy obviously rests, just as does the success of a political or industrial democracy, upon the character of its members. In earlier chapters we have seen the large number of prisoners who can in no way be considered capable of ruling themselves. Hence any Mutual Welfare League becomes an ideal requiring much more careful classification of prisoners than we have ever yet attempted. Given a group of convicts capable of responding to the opportunities of such a system we may expect from its application some very desirable results.

<sup>34</sup> H. E. Barnes, "The Progress of American Penology as Exemplified by the Experience of the State of Pennsylvania, 1830-1920." *The Journal of Criminal Law and Criminology*, vol. XIII, pp. 216-17.



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## XVII

### SUBSTITUTES FOR IMPRISONMENT

#### I. FAILURE OF THE PRISON

For all modern purposes imprisonment has been demonstrated to be a failure. It does not protect society. It does not deter criminals from committing crime. The most strenuous, painstaking and persistent efforts of the past one hundred years have not served to reduce the percentage of crime. Attempts to make the prison a means of reformation have been by no means successful. Instead, the prison now rests under the indictment of being one of the chief contributing factors in the development of the habit of criminality.

The failure of the prison is not a new discovery. Society has been using the prison, in the absence of any other practical method, with increasing reluctance for the past seventy-five years or more. Reluctance to use the prison has shown itself in efforts to shorten the length of the sentence as far as possible in individual cases through the use of the pardon, the commutation of sentence, the indeterminate sentence and parole, and in the tendency to avoid the use of the prison entirely by resort to the suspended sentence, probation and other methods. The development of such subterfuges has not been accidental. There is reason to believe that they mark the beginning of a revolt against the prison which will result in its complete abandonment for all purposes save that of permanent segregation of those offenders who cannot be reclaimed by society.

#### II. SUBSTITUTES FOR IMPRISONMENT

1. *Use and abuse of the pardon.* The use of the pardon is a very ancient custom. Historically the power to pardon has

been vested in the supreme ruler. In America the fear of executives which was a part of the democratic complex led to the vesting of the pardoning power in the legislatures. Gradually, however, the states began strengthening the powers of the governor until at present he has the sole and complete power to pardon in thirty states. In twenty-five of these he has the advice and council of an advisory board. In eighteen states the governor is one member of a pardon board or council which has the pardoning power.<sup>1</sup>

Pardon may be conditional or absolute. Conditional pardons may stipulate the behavior, occupation, and residence of the released prisoner or such other conditions as may be considered likely to prevent his return to a life of crime. In the event of his failure to observe the conditions of his pardon he may be returned to prison. In this respect, the conditional pardon does not differ greatly from parole.

The pardon as at present employed is open to merited criticism. A few of the more common criticisms are;—(1) Pardon may be secured through the use of influence regardless of the merits of the case. (2) It leads prisoners to simulate reform in the hope of release. (3) It leads to carelessness on the part of judges in imposing sentences. (4) Governors, for lack of time and information, use the pardoning power unwisely and many times for trivial reasons.<sup>2</sup> (5) It has been used as a form of prison delivery to make room for other prisoners. (6) Injustice to other prisoners may result from pardons granted to particular individuals because of some striking condition in each case, such as youthfulness, contrition, unusual personality or attractiveness in female prisoners. More recently prisoners are being pardoned for no other reason than that they served the country in the war.

Nevertheless, there are certain values in the pardoning system. So long as we have antiquated laws and harsh punish-

<sup>1</sup> On the subject of the pardon see C. Jensen, *The Pardoning Power in the United States*.

<sup>2</sup> E. H. Sutherland, *op. cit.*, p. 502.



ments it will be necessary to intervene in the interest of humanity. In states without adequate juvenile court laws the pardon is necessary to prevent grave abuses. Wherever penalties are fixed by law without power of parole or commutation there is no other method of adapting the treatment to the individual offender. It may rightfully be said that the remedy for such conditions is to correct the law and court practice, but until this is done some form of pardon will be necessary.

It has been shown through experience that the probability of pardon increases with the severity of the sentence.<sup>3</sup> The average time served before pardon by those on life sentences in Massachusetts from 1833 to 1862 was 6 years and 3 months. Forty per cent of the prisoners sentenced to the Minnesota prison for life up to 1922 received pardons, paroles, or commutation of sentence.

Sutherland has collected figures to show that there has been a constant decrease in the use of the pardon since the middle of the last century. In 1920 the use of the pardon was rare as compared with the practice in a number of states in 1850 and 1860.<sup>4</sup> This is no doubt due to the mitigation of the severity of sentences and to the general and extensive use of parole.

In recent years there has been a tendency to restrict the use of pardon by legislation. In Rhode Island a person convicted of a crime punishable by imprisonment of five years or more may be pardoned only by a concurrent recorded vote of three-fourths of all the members elected to each house and with the additional approval of the governor. North Dakota has provided that no one convicted of murder in the first degree may be pardoned, unless innocence has been proved, until he has been confined at least fifty per cent of his life expectancy.<sup>5</sup>

2. *Commutation of sentence.* Next to the pardon, the com-

<sup>3</sup> E. C. Wines and T. W. Dwight, "Report on the Prisons and Reformatories of the United States and Canada," *New York Assembly Documents*, 1867, No. 35, pp. 297-298. See also E. H. Sutherland, *op. cit.*, p. 504.

<sup>4</sup> E. H. Sutherland, *Criminology*, p. 503.

<sup>5</sup> *Ibid.*, pp. 373-374.

mutation of the sentence is perhaps the earliest of the modern efforts to curtail the prison experience of the offender. According to Barnes, the earliest instance of application of the principle appears in a law passed in 1817 in New York State and put into application in Auburn Prison. It provided that all prisoners sentenced for five years or less might earn a reduction of one-fourth of their sentence by good behavior and a stipulated amount of "overwork."<sup>6</sup> This appears to have been regarded quite as much as an economic measure as a disciplinary feature, and it remained purely a local enactment.<sup>7</sup>

The idea came before the public later through the writings of Archbishop Whatley of Dublin in 1829. A practical application of it was made by Captain Maconochie in the penal colony at Norfolk island following 1842 and it was incorporated into Crofton's system in the Irish prisons in 1853. It was under the influence of the Irish system that it was introduced into American prisons following the Civil War.

Commutation of sentence may be in lieu of pardon. In such cases the original sentence of the offender is shortened a period of time, usually sufficient to make the commuted sentence terminate at the time of commutation. There are some technical distinctions between commutation of this sort and pardon which we need not discuss here.

In general practice, however, commutation is a system of shortening the sentence, applied legally in prison and so arranged as to be an inducement to good behavior on the part of the prisoner. As an illustration of the manner in which commutation of sentence for good behavior is employed we cite the following from the laws of Pennsylvania:

"Every convict . . . may . . . earn for himself or herself a commutation or diminution of his or her sentence, as follows, namely: Two months for the first year, three months for the

<sup>6</sup> H. E. Barnes, "The Progress of American Penology as Exemplified by the Experience of the State of Pennsylvania, 1830-1920," *Am. Jour. Crim. Law and Criminology*, August 1922, p. 171.

<sup>7</sup> P. Klein, *Prison Methods in New York State*, pp. 406-407,



second year, four months for the third and fourth years, and five months for each subsequent year.<sup>8</sup>

3. *Indeterminate sentence and parole.* The technical distinction between the commuted sentence and the indeterminate sentence is the manner in which the sentence is imposed. In the case of commutation, a fixed penalty is imposed by the judge. This may be commuted by executive clemency or by the prison officials or a prison board for good behavior. In the case of an indeterminate sentence a minimum and a maximum sentence are fixed by the judge in conformity to legal regulations. The offender shall not serve less than the minimum nor more than the maximum. What is undetermined at the time of his sentence is the exact time of his release. This is to be determined, as in the case of commutation, by his behavior in prison. Prison officials or a parole board determine the point at which he is to be released according to various grading or rating systems which we need not discuss. While this is not really an indeterminate sentence because the maximum and minimum are determined at the time sentence is imposed, it is everywhere called so. The retention of a minimum and maximum sentence for adult prisoners is the result of the unwillingness of legislatures to give such complete powers to prison officials, including parole boards, as a true indeterminate sentence would convey.

Another important distinction between the indeterminate sentence and the commutation of sentence lies in the status of the offender after his release from prison. In the case of the commuted sentence, the prisoner has technically satisfied the law when he is released from custody. In the case of the indeterminate sentence, a part of the sentence is customarily spent outside of the institution on what has been called ticket of leave, conditional liberation, or more commonly parole. This distinction is a general one as parole may be used in connection with a commuted sentence and the indeterminate sentence may and often does terminate unconditionally.

<sup>8</sup> *Laws of the General Assembly*, 1901, p. 166.



Parole is not to be confused with any kind of sentence. It is a condition in which a prisoner remains for a time after his release from confinement, in the custody of the state and from which he may be returned to prison for violation of the conditions of his liberation. After the satisfactory completion of his parole he is discharged from custody.

A. *History, practice and results of the indeterminate sentence.* The indeterminate sentence is known to have been used by the Church at the time of the Inquisition. It was used for minors committed to the workhouse in the early part of the eighteenth century. Connecticut provided for its use in connection with workhouses in 1769. It has been used for minors in houses of refuge or reformatories practically from their inception.<sup>9</sup> The principle was applied in the New York House of Refuge in 1824 and in the Philadelphia House of Refuge in 1826.<sup>10</sup>

It seems to have been first advocated for adults in state prisons by Archbishop Whatley. George Combe set forth a comprehensive statement and defense of it about 1835. It was recommended for adoption in the prisons of England and Scotland by Frederick Hill in 1839. It was a part of the system inaugurated by Captain Maconochie in the penal colony at Norfolk island and received much consideration for adoption in America as a result of the interest in the Irish system following the Civil War. It was authorized for use in Elmira Reformatory in 1869 and adopted the same year in Michigan where it was declared to be unconstitutional after a short time.<sup>11</sup>

The first general indeterminate sentence law was secured in New York State in 1889, but it was very little used until a compulsory clause was added in 1901. Within the next twenty years it had been authorized by thirty-seven states. Restrictions upon its use for certain crimes and types of offenders have

<sup>9</sup> E. H. Sutherland, *Criminology*, pp. 510-511.

<sup>10</sup> H. E. Barnes, *loc. cit.*, p. 174.

<sup>11</sup> E. H. Sutherland, *op. cit.*, pp. 511-512.

been imposed in various states without uniformity as to crimes or offenders.

The minimum sentence has been retained for fear that criminals may not be sufficiently punished without it. It has been argued also that officials need a minimum time in which to study the prisoner and form an opinion as to his fitness for release. The fear that prisoners would be released too soon has not been well grounded, however, as some states in which the minimum has been abandoned have not shown a tendency to release prisoners prematurely. On the other hand there is evidence to show that the average length of sentence has increased with the use of the indeterminate sentence.

The fear that prisoners might be unduly punished is said to be the principal reason for the retention of a maximum limit in practice. On the whole, the use of the maximum limit is probably much more unfortunate for society than the occasional holding of a prisoner unjustly. At the expiration of the maximum sentence the prison authorities are obliged to release every year hundreds of dangerous felons who are known to be unregenerate and who may be expected to return to careers of crime immediately.

Numerous arguments are advanced against the use of the indeterminate sentence among which may be mentioned three which are of primary importance. The major weakness of such a sentence lies not in the principle so much as in the fact that it is difficult to find the right personnel for putting it into use. In addition to untrained and inefficient personnel, there is the difficulty of determining when a prisoner is reformed sufficiently to merit release. Finally the effect on guards and prisoners may be bad. Prisoners may be kept in confinement because they have antagonized guards or for other petty reasons. On the other hand, the prisoner may seek to gain good reports by trying to win the favor of guards rather than by conforming to rules and by general good behavior.

With properly trained prison officials and a scientific program for the custodial treatment of offenders commitment to



the institution will take the place of sentence and courts would have no more reason for fixing a time of residence than would a medical board for committing to an insane asylum or a doctor in sending patients to a hospital.

**B. Parole.** The history of parole is very similar to that of the indeterminate sentence. It has been used in connection with juvenile reformatories since their inception and a form of it appeared in the system of indenturing prisoners. Its use in connection with efforts to reform adults came along with several other efforts of the early societies for befriending criminals, especially those who had been discharged from prison. These efforts consisted of assistance in finding work, supervision of association and recreation of the released prisoners and other efforts to prevent their return to criminal careers. Massachusetts appointed an officer to render similar service to discharged prisoners in 1845. Other states followed her example and in time it became obvious that these officers could work to much greater advantage if they had some authority over the men they were trying to assist. It was finally recommended to the prison authorities of New York that the men be released from prison but not from custody. This was first put into operation in connection with Elmira Reformatory in 1869.

A similar practice, but without supervision to any great extent, was employed in the English penal colonies as early as 1820 and became known as the ticket-of-leave system. The practice was involved in the general reformatory movement which was called the Irish system and which greatly influenced American reformers following the Civil War. Ohio adopted the parole system in 1884 and after that it spread rapidly until it was employed in over half the states before 1900. Forty-five states had parole laws in 1920 and the remaining states were using it in connection with juveniles. While its use is now general it is by no means uniform. Releases from state prisons on parole about the year 1920 ranged from 90 per cent in Elmira, 80 per cent in Michigan and 70 per cent in Western



Pennsylvania to 12 per cent in Arkansas and 14 per cent in New Mexico.<sup>12</sup>

The difference between the theory and practice of parole is an indication of the utter futility of American penal institutions. The generally accepted principle involved in selection of prisoners for parole is the fitness of the individual for release. It must be thought safe for society to give him conditional liberation and it must be believed that the conditional release will be more conducive to reformation or restraint from crime than his continued confinement. In spite of these considerations, some states parole all but exceptional cases as soon as they are eligible for parole. Behind such a practice there is a powerful economic motive. Indications are that parole violations are no more numerous where the percentage of early releases is high than where it is low. Warner's study of parole successes and failures in Massachusetts did not indicate any relation between success and the length of time spent in prison.<sup>13</sup> It is doubtful if parole failures would be much more numerous if a much larger percentage of prisoners were paroled each year.<sup>14</sup> It appears that length of sentence served, conduct in prison, previous prison experience, deviation from normality, or any other criterion has not a great deal to do with parole success or failure. It is probable that the results would not be changed greatly if a certain number of the prisoners in each institution were drawn by lot and liberated each year.<sup>15</sup>

4. *The suspended sentence.* In many cases where guilt is obvious, whether proved by the trial or confessed by the criminal, the ends of society are better served by refraining from

<sup>12</sup> From figures collected by Sutherland, see *op. cit.*, pp. 225-226.

<sup>13</sup> S. B. Warner, "Factors Determining Parole from the Massachusetts Reformatory," *Jour. Crim. Law*, August 1923.

<sup>14</sup> F. Tannenbaum, *Wall Shadows*, A Study in American Prisons, pp. 165-166.

<sup>15</sup> For a good discussion of the parole system see E. H. Sutherland, *Criminology*, chap. XXII, and L. N. Robinson, *Penology in the United States*, chap. XI.

punishment. To be sure, this is flouting outright the traditional ideas of justice, and the sight of a criminal going "scot free" is not a powerful deterrent for evil-doers. Nevertheless, so ineffective has the prison become oftentimes that it defeats its own ends.

As rational as the use of the suspended sentence appears to be, it seems strange that we did not think of using it sooner. Unless a man is pathological and incapable of learning by experience, the results of being apprehended for a first offense are apt to be all the lesson necessary to prevent a repetition. This is especially true if he is not entirely free from responsibility for his first offense and a repetition is likely to bring him to account for both offenses. Judges have become so convinced of this that they have resorted to the suspension of sentence rather than incur the risks of disaster involved in prison discipline.

It has long been a principle under common law that a court, for various reasons, could suspend a sentence temporarily. In practice this temporary suspension came to be extended until it might mean an indefinite time. Sometimes the persons under such suspension of sentence were required to give some financial guarantee of good behavior. Because of the likelihood of more or less irresponsible persons losing this sort of bail, kindly disposed individuals bent their efforts to assist them in keeping out of trouble. Naturally, too, those who had become security for the good behavior of offenders were concerned that their money should not be forfeited. Eventually the practice of volunteering to look after persons under suspended sentence made its appearance. Ada Elliot cites the case of one John Augustus of Boston, who, between 1849 and 1856, acted as security for over four hundred men and women to the extent of over fifteen thousand dollars without having a single one of his charges violate the condition of his release.<sup>16</sup>

Under the influence of Father Cook, the judges in Boston

<sup>16</sup> Ada Elliot, "The American Probation System," *Charities*, September 20, 1902.



in 1872 adopted a practice of continuing certain cases indefinitely rather than to impose sentences. The cases were continued under a condition that the offender submit himself to the good influences of the kindly Father who tendered his services in his behalf.<sup>17</sup> Two years later the practice of suspending sentence with probation was extended to the entire state. The practice of appointing a probation officer for supervising persons under suspended sentence was optional until 1891 when it was made compulsory.

The suspended sentence may be of two types. It may mean that the imposition of sentence is suspended, or it may mean that the sentence is imposed but that the execution of it is suspended. If the above account of the origin of the practice is correct, it appears that it was first a sort of informal delay of justice in the hope that punishment would not be necessary. This form has been widely used in connection with probation. It is easily applied if the services of a probation officer are available. The practice of leaving the case open, however, complicated the court procedure and it became more convenient to commit the offender to a probation officer, in which case, the court was not further involved unless the terms of his probation were not kept. If the period of probation were successfully passed, the offender had the advantage of not having been sentenced for a crime. If further discipline became necessary, the offender might be sentenced and justice be allowed to take its course.

In the case of the suspension of the execution of a sentence, the offender knows just what is involved in the violation of the terms of his release. He is convicted and sentenced, but for definite reasons and on certain conditions, punishment is withheld, for the duration of good behavior, while this additional sentence will fall upon him if he commits another crime. This form of suspended sentence is commonly used for minor offenders without probation, the suspension being "during good

<sup>17</sup> C. T. Lewis, "The Probation System," *Proceedings of the Nat. Conf. of Char. and Cor.* 1897, pp. 38-46. Also L. N. Robinson, *op. cit.*, p. 195.



behavior" or on condition that the offender leave the community. In many cases of first offenders, one such experience is all that is necessary to prevent further anti-social acts. The suspended sentence, in one form or the other, is an essential part of the probation system.

5. *Probation.* Probation differs from parole in that it is a substitute for punishment used in the hope of avoiding it, while parole is a part of penal discipline employed after punishment is partly accomplished. This is not necessarily true for the sentence may, in some cases, not be to imprisonment, but the suspended sentence with probation has come to be looked upon as a substitute for imprisonment.

As we have seen, probation was originally a volunteer service. First the volunteers were recognized by the courts and prisoners were remanded to their custody. Later the probation officers were made officers of the courts with salaries. For a number of years following 1861 Chicago employed a practice which was a practical forerunner of the present-day children's court. A commissioner was employed to hear cases of delinquent boys. He was given authority to place them on probation.<sup>18</sup> Massachusetts seems to have the honor of having been the first state to pass a law providing for a publicly paid probation officer. This law, enacted in 1878 authorized the mayor of Boston to appoint and pay such an officer and gave authority to the municipal court to place offenders on probation. Two years later it was extended to the entire state but it was little used during the next decade.<sup>19</sup> Massachusetts was the only state having such a law until 1899. With the advent of the children's court in that year other states began adopting probation. So rapidly did the movement develop that by 1917 it had been adopted by every state in the Union.

Unfortunately the appointment of probation officers is not compulsory in a majority of communities. The use of volun-

<sup>18</sup> T. H. MacQuery, "Reformation of Juvenile Offenders in Illinois," *Amer. Jour. of Sociol.*, March 1903.

<sup>19</sup> E. H. Sutherland, *Criminology*, pp. 561-562.

teer officers has had serious limitations. Only comparatively recently has there been insistence anywhere upon trained officers. Rural communities are particularly backward in providing probation officers and many fairly large cities are also delinquent in this respect.

Restrictions upon the types of offenders eligible for probation are common but not uniform. Conditions of probation do not differ greatly from those of parole. The length of the probationary period appears in practice to be about the same as the maximum sentence which might be imposed for the offense.

In the nature of probation, the officer can do his best work only when he can make intimate contacts with his charges. The purposes of probation are commonly defeated by assigning too large a number of charges to an officer. Fifty charges is considered the maximum for efficient service. Ideally the number should be even less, especially where the officer is obliged to function over a wide territory as in many rural districts. In some communities a single officer may be responsible for several hundred probationers. It is obvious that he cannot do efficient work under such conditions.

Reports upon the results of probation from various states seem to indicate that from 75 per cent to 85 per cent of probationers get along satisfactorily while on probation. The remainder violate the rules of their probation, commit new crimes, or are lost sight of by the officer. There is reason to believe that such reports overestimate the success of probation. However, several studies which have been made to determine the number of probationers who continue on good behavior after release from probation seem to indicate that a very small proportion return to delinquency.<sup>20</sup>

Probation has the tremendous advantage of avoiding the vicious consequences of imprisonment or institutional treatment. It makes it possible for the officer to operate upon conditions which contribute to the delinquency. It substitutes the

<sup>20</sup> E. H. Sutherland, *op. cit.*, pp. 583-584.



fact of co-operation for coercion. It enlists the interests of the probationer without rousing his resentment. It is less expensive to society than institutional treatment and is a great conservator of human material. It is in line with and a part of a scientific program for the diagnosis and treatment of crime.

The objections to probation are almost entirely theoretical and there is little reason to believe that disastrous results anticipated actually work out in practice to any great extent.<sup>21</sup> The principal objection is to *modus operandi* which, while a practical objection, should lead to an improvement of method rather than to the abandonment of the principle.

### III. GRADING OF PRISONERS

Any system of reducing the term of imprisonment because of good conduct necessitates some form of classification of prisoners. At the close of the colonial period convicts of all sorts,—criminals, debtors, vagrants and witnesses,—and of all ages, both sexes and all mental and social conditions, were herded together. The first steps in improving this condition were the separation of the sexes, the removal of the worst type of criminals from the lesser criminals, a separate institution for the accused, debtors and vagrants, and, later, reformatories for the young. In some parts of the country local practice often makes a separation according to color. The separation of the insane and the development of special institutions for their care has been recently followed by the separation of the feeble-minded into special institutions.

Such class and type differentiation must necessarily precede the more specific grading of prisoners according to behavior. As H. E. Barnes has said, "Any scheme for grading and advancing convicts on the basis of their conduct, however admirably worked out and standardized, would fail utterly if applied indiscriminately to a group of convicts of every age, both sexes, all grades of criminality and varying degrees of mental

<sup>21</sup> *Ibid.*, p. 587.



abnormality. Class and type differentiation of some general nature, at least, must precede the application of behavior tests which will possess any validity for deciding as to the relative fitness of an individual convict for freedom.”<sup>22</sup>

In the Irish system developed by Crofton a prisoner advanced from the condition of solitary confinement to parole through stages which permitted a progressively greater degree of freedom, the rapidity of advancement depending on the efforts of the convict. In this country Elmira first applied in an effective and permanent way the essentials of the Irish system. The Western Penitentiary of Pennsylvania finally adopted a system modelled on that of Elmira. Convicts entered in “second grade.” Six months of good conduct advanced them to the first grade and greater privileges. They were housed in larger cells, allowed one more hour of light, freed from the necessity of marching in lock-step and of wearing the prison stripes and they obtained the benefits of commutation. Serious misconduct reduced the prisoner to the third grade, where all privileges were denied, and where he was compelled to work by good conduct back to the first grade. This arrangement has been retained with but few changes to the present day, and is fairly representative of the grading and commutation system of the country at large.

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## XVIII

### SPECIALIZED TREATMENT OF YOUTHFUL OFFENDERS

#### I. YOUTH AND THE CRIME PROBLEM

EVER since the doctrine of personal responsibility became the basis of the criminal law a knotty problem for legal minds has been the age at which responsibility begins. For reasons which are not clear the age of responsibility was, by common consent, fixed at about the seventh year. Children under this age were supposed to be disciplined by their parents. Above this age children were tried and treated for violation of the law in the same manner as adults. There was still some suggestion of possible irresponsibility up to the age of fourteen which made it desirable to inquire into the matter of responsibility up to that age in each case. As the years went by the obvious irresponsibility of a child of seven began to impress one state after another and the limit was raised from seven to ten or still higher without any prevailing standard for the country at large.

Distinctions between youthful and adult offenders both in the manner of trial and of treatment after trial have been made here and there in America for nearly a century. No doubt it was a common practice to give special consideration to children in some courts prior to the nineteenth century. We have seen that houses of correction made their appearance in the sixteenth and seventeenth centuries in England and on the Continent. Houses of refuge appeared in New York in 1825, in Boston in 1826 and in Philadelphia in 1828. Children were committed to these institutions during minority and the treatment was reformatory rather than punitive. The spread of the



reformatory idea was rapid after the middle of the nineteenth century.

The indeterminate sentence was used in committing children to the houses of refuge and reformatories practically from their inception. Assuming that it was first used in New York in 1824, it was forty-five years before it was applied to selected adults at Elmira. The first state law for its use in the other adult prisons in that state was not passed until 1889, or sixty-five years after its adoption in children's cases.

Parole, also, characterized the treatment of juveniles in the earliest reformatories. While it was no doubt in use at that time or shortly after for adults in a limited way, it was not put into general use with adults for some time after the middle of the century.

Although probation has been in use for a long time for both adults and children it did not come into general use until after the establishment of the juvenile court in 1899. In fifteen states the use of probation is limited to juvenile offenders.<sup>1</sup> Although some Eastern States, especially New York and Massachusetts, use probation in adult cases much more frequently than with juveniles, there are many Western communities which make practically no provision for adult probation, even though it be authorized by law.

## II. THE CHILDREN'S COURT

To Chicago goes the honor of having devised the children's court. It experimented with the idea for a short time nearly forty years before it finally adopted it as a permanent institution. The Mayor of Chicago was authorized by the state legislature, in 1861, to appoint a commissioner to hear the cases of boys between the ages of six and seventeen who were brought before him for petty offenses. He might send them to a reform school, release them on probation or use other methods of treatment. After six years this plan was abandoned and the

<sup>1</sup> E. H. Sutherland, *Criminology*, p. 562.

work was transferred to the regular courts.<sup>2</sup> Toward the end of the century it became common for children's cases to be heard by the probate courts without the jury or customary formal court procedure. Out of this practice the children's court finally made its appearance in 1899.

1. *Distinguishing characteristics of the children's court.*

A. At the inception of this specialized court procedure for children *the age limit was raised from seven to sixteen*. Children under sixteen were called *delinquents* to distinguish them from criminals.

B. The trial of the children's cases was shifted to chancery procedure. The state became guardian for the *delinquent child* as it long had been for the dependent child. This reverses the traditional attitude of society toward the case. Where it had been the prosecutor of the criminal it now became the defender of the delinquent and the protector of his interests as well as its own interests in him. The question of guilt becomes secondary to the matter of reasons for behavior.

C. Chancery procedure carried with it *the substitution of an inquiry for formal procedure*. The judge might get information from any source without the presence of a jury and attorneys and without the formal questioning of witnesses, the object being not to determine guilt and punishment but to manage the case in the best interests of the child.

2. *Progress of the children's court movement.* The country seemed to have been waiting for some such solution of the increasing problem of the delinquent child. The rapid growth of cities with their artificial and complicated conditions of living, as well as the absence of provision for diversion and recreation of the children, had been forcing the matter of abnormal, not to say anti-social, conduct of children upon the average American community. Within ten years of the establishment of the children's court in Chicago, twenty-two states had similar

<sup>2</sup> T. H. MacQuery, "The Reformation of Juvenile Offenders in Illinois," *Amer. Jour. Sociol.*, March, 1903.



laws and every state in the Union except Maine, Connecticut and Wyoming had such a law by 1920; and these three had adopted some features of the juvenile court method.<sup>3</sup> The age limit in some states has been put at seventeen or eighteen and even as high as twenty-one years. The jurisdiction of some courts has been extended to include cases of adults who commit offenses against children and persons who contribute to the delinquency or dependency of a child. There has been a general tendency to retain the use of a jury and more or less formal procedure in the trial of adults in the children's courts.

3. *Further developments of the children's court.* As time went on the method and technique of the children's court developed until it has come to differ from the criminal court in a number of very important ways. Sutherland makes the following comparison between the customary court procedure and what is considered to be the ideal juvenile treatment.

(1) The criminal court is characterized by contentiousness, with two partisan groups in conflict, while the juvenile hearing is characterized by scientific methods of investigation.

(2) The purpose of the criminal trial is to determine whether the defendant committed a crime with which he is charged, while the purpose of the juvenile hearing is to determine the condition of the child.

(3) In the criminal trial there is no machinery for securing information regarding the character of the accused. In the children's court there is or should be elaborate machinery for this purpose.

(4) Such information, if secured, may not be introduced as a part of the evidence in a criminal trial. In the juvenile court such information is the basis on which the decision is made.

(5) Treatment in the specific criminal case is determined not by the needs of the particular individual but by the legislature, in advance, for all who violate the law in question, with reference primarily to other actual or potential delinquents.

<sup>3</sup> E. H. Sutherland, *op. cit.*, p. 285.



Treatment in a specific juvenile case is determined by the needs of the particular individual without reference to other actual or potential delinquents.<sup>4</sup>

4. *Requirements for an adequate juvenile court.* In 1918 Evalina Belden made a survey of the courts hearing children's cases for the United States Children's Bureau. She gives the following characteristics of juvenile courts:

(1) Separate hearings for children's cases.

(2) Informal or chancery procedure.

(3) Regular probation service both for investigation and supervisory case.

(4) Detention separate from adults.

(5) Special court records and probation records, both legal and social.

(6) Provision for mental and physical examinations.

It was her opinion that the first, third and fifth of these are so important that a court without any one of them is not a juvenile court.<sup>5</sup>

5. *Social values of the juvenile court.* The juvenile court as ideally conceived represents the farthest advance of science into the terrain of traditional procedure. With a daring disregard for hoary tradition exponents of this reform have set out to get social results by whatever method offers the greatest promise of success. Few people outside the ranks of the legal profession and a relatively small number of social workers realize the extent and significance of this break with the past in the interests of childhood and social utility.

Volumes could be and have been written on the social value of the juvenile court. We shall confine ourselves to a brief consideration of a few of the more outstanding characteristics of this reform, selected for their sociological significance.<sup>6</sup>

A. *Informality and privacy.* Throughout the centuries we

<sup>4</sup> *Op. cit.*, p. 283.

<sup>5</sup> "Courts in the United States Hearing Children's Cases," Children's Bureau, *Pub.* 65, pp. 10-12.

<sup>6</sup> A short list of the outstanding works on the juvenile court will be found in the bibliography at the end of this chapter.

have been so overawed by the majesty of justice and the buncombe of formal court procedure that it did not occur to us until recently that we could get at the facts better by having a kindly man or woman take the child aside and quietly talk things over. Even now, it is a terrible wrench for the worshipers of legal tradition to admit that this is so; but hundreds of daily occurrences in children's courts throughout the country are proving it to be true.<sup>7</sup>

This sweeping change in the manner of treating children's cases is, of course, the result of the passing of the notion that the child is a criminal. As long as that idea prevailed it was considered necessary to take a proper attitude toward the bogey which the word criminal conjured up in our minds, even though the criminal were a child. Only recently have we had the good sense to banish the bogey and realize that the delinquent is only a child after all.

When the state assumes the guardianship of a child as it does in chancery procedure, the case passes over to a great extent from a *public* to a *family* matter. Since the outcome desired is the welfare of the child, the intimate details of the case are nobody's business other than the members of the "family," i. e., the judge and his assistants. Consequently publicity in children's cases is almost everywhere withheld by common consent. None but interested parties are expected to appear in the case and these informally and one at a time. The revelations of the child to the judge or referee are confidences which are not to be used to incriminate the confessor. Means are found of discouraging the attendance of curious and morbid persons, even when the interests of adults still require the hearings to be more formal and public.

This matter-of-fact abandonment of red tape, and direct approach to the business in hand mark a signal victory for intelligence. The practical ends of society are conserved and

<sup>7</sup> Excellent illustrations will be found in M. Van Waters, "The Socialization of Juvenile Court Procedure," *Amer. Jour. Crim. Law*, May 1922, and in her *Youth in Conflict*.



nothing is lost or injured except certain outworn notions of the fitness of things.

B. *Social and legal evidence.* The juvenile court has a tremendous advantage over the ordinary court in the means which it has for getting at the facts. Since evidence is not going to be submitted to a jury and witnesses are not to be sworn in a public examination, the judge and his assistants are at liberty to get information wherever it is to be had. Rules of evidence which in the criminal courts not infrequently prevent the submission of most important information to the jury are not in operation here. It is possible for the judge to sense out social situations in the home and in the neighborhood which are of tremendous importance in the disposal of the case but which could not figure in criminal trials.

So far as it is humanly possible, every factor entering into the production of delinquency may be taken into consideration. Such evidence as the juvenile judge is able to accumulate for his guidance has come to be called *social evidence*. Since the delinquent is not accused of a crime, no effort is being made to prove his guilt, and as he is not going to be punished for it in the traditional sense, *legal proof* is not required. Consequently all of the traditional safeguards of the individual in the matter of legal proof can be discarded.

If adults are involved, the power of custom still compels the retention of formal methods. Thirty-one states have given juvenile courts power to deal with adults such as parents or others who contribute to dependency or delinquency of minors. In some of these the powers of the courts are limited. In many there is the right of such adults to appeal from the decision of the court and to demand a jury trial, and be represented by council.<sup>8</sup>

C. *Social service and probation.* Provision for social service is indispensable for the successful operation of a juvenile court. The collection of social evidence is not the work of

<sup>8</sup> S. P. Breckenridge and H. R. Jeter, "Summary of Juvenile Court Legislation in the United States," Children's Bureau, *Pub.* 70.



amateurs. Rarely is the judge in position to collect it for himself. He cannot make an intelligent disposition of a case without it. It is necessary, therefore, that he should have the assistance of one efficient person, or as many more as the business of his court requires. Training either in the schools of social work or in experience is necessary to get at and interpret the facts.

Trained assistants serve the court in three important ways. First we have the collection of the evidence. The second service frequently develops while the first is being rendered. Not infrequently difficulties may be straightened out and the case properly adjusted by the social worker without its becoming necessary to bring it before the judge. In this way the judge is spared the annoyance of dealing with many trivial cases and many cases are prevented from assuming a formidable character. Finally, officers of the juvenile court serve in the capacity of probation officers. In communities provided with adequate probation nearly half the delinquents are placed on probation and only about one-fourth are committed to institutions. In rural communities in Illinois, with inadequate or no probation facilities, less than a third are placed on probation and nearly half are sent to institutions.<sup>9</sup>

D. *Clinical treatment of the case.* Adequately equipped juvenile courts are now functioning in the nature of clinics. The disposal of the case is determined on the basis of three investigations which have developed a scientific method and greatly reduced the element of guesswork.

(1) *The social diagnosis.* Social workers in the juvenile courts employ what have come to be called case-work methods. These include the collection of all the information of a social character about the child, his family, associates and neighborhood, as well as a history of his treatment, if any, at the hands of other social agencies such as health, schools, and relief organizations.

<sup>9</sup> E. Belden, *op. cit.*, p. 41. See also E. H. Sutherland, *op. cit.*, pp. 296-297.

(2) *The mental diagnosis.* Owing to the increasing importance attached to mental inferiority and to deviation from normal mental health as causes of delinquency, no juvenile court is now considered to be adequately equipped which has not facilities for making thorough psychological and psychiatric examinations of all children which come before it. The futility of attempting to adjust a subnormal child to an environment without making provision for adequate supervision is now well known. Only recently have we come to appreciate the importance and prevalence of deviations from normal mental health in juvenile delinquency. Where this is a chief contributing factor in delinquency the pathological condition must be corrected or proper safeguards must be taken on account of it. In the past an immense amount of grief and an enormous amount of wasted social effort have resulted from failure to appreciate these facts. Psychiatry is rapidly taking a foremost place in the diagnosis and treatment of crime. It might be compared to the use of the X-ray in modern medicine and surgery.

(3) *The physical examination.* Pathological conduct is often partly or wholly the result of an abnormal physical condition in the offender. Ailments and defects are related to crime, according to Sutherland, in three ways: (a) they cause irritation and discomfort; (b) they cause weakness, inefficiency, retardation and failure; (c) and they cause a lowering of social status and a feeling of inferiority.<sup>10</sup> Often delinquency ceases with the removal of bad tonsils or adenoids, the correction of defective vision or the treatment of teeth and the elimination of pus foci. Defects which make a child conspicuous, uncomfortable, lower vitality or produce an excess are often causes of delinquency. Frequently in such cases, correction of the defects is the only treatment necessary. Where correction is not possible, the adjustment of the individual must take them into consideration.

#### 6. *Measures of success and failure of the juvenile court.*

<sup>10</sup> *Op. cit.*, p. 180.



Statistics are not available to prove the success or failure of the children's court. There is a division of opinion regarding its merits although it is probable that a great majority of those most familiar with it at its best would unhesitatingly defend it as against the traditional practices which it has supplanted. One everywhere hears the claim that it is seventy-five per cent successful, that is, that three-fourths of the children who are handled by it do not again appear in court. Where studies have been made carefully it appears that approximately 30 per cent of the children who come before the court reappear in the course of the next five years, and that about 2 per cent appear annually.<sup>11</sup> These and similar figures are of little value. Shifts in population, and the fact that children who appear in the court for the first time when near the upper age limit are soon out of its jurisdiction, make it impossible for a large percentage of children to appear a second time in the same or any adjacent juvenile court. It is probable, however, that more than half of the children handled by the court do not have to be adjusted a second time.

There is some evidence that the courts are much more frequently successful with normal than they are with subnormal children.<sup>12</sup> Viewed from the standpoint of a sort of a selective process which detects for us the unadjustable children, it is invaluable in calling attention to these potential criminals. In addition to this it undoubtedly permanently interrupts a great number of criminal careers.

Sutherland has aptly stated the case as follows:

"But, after all, the question is largely a question of comparison. When considered as a substitute for the criminal court, it is a decided success; when considered in relation to what might conceivably be done for the reformation of delinquent children, it appears to be a failure. Those who speak most frequently of the failure of the juvenile court, probably, in no case prefer the old criminal court procedure. They in-

<sup>11</sup> Judge Baker Foundation, *Pub.* 1.

<sup>12</sup> "Chicago City Council Committee on Crime," *Report*, 1915, pp. 113-128.



sist on the failure of the juvenile court in order to secure a still better substitute for the criminal court.”<sup>13</sup>

From a social standpoint, the idea of the juvenile court is sound. When faithfully tried out with fairly adequate organization and personnel it attains a considerable efficiency, taking into account the conditions which are out of its power to control.

A. The juvenile court, as ideally constituted, *is employed to a very limited extent in the United States*. Miss Belden reported that in 1918, out of 175,000 children's cases in the United States, only 50,000, or two out of seven came before courts adapted to hearing children's cases; and that only 16 per cent of the courts that hear children's cases had the three absolutely essential characteristics; separate hearings for children, probation service, and records of social information.<sup>14</sup>

B. *Judges and referees*. There are several ways of constituting children's courts. A special children's court may be constituted by law and the judge elected or appointed to the position. He or she may or may not be a lawyer. Where the court is not constituted in this manner, provision may be made for a judge or a magistrate to sit occasionally as a children's judge. If there are several judges in the group to which the juvenile court is attached, they may rotate in performing the functions of the children's judge. The juvenile court may be a part of the function of the county, circuit, or district courts. In parts of North Carolina the clerk of the county court acts as juvenile judge. In California the judges of the Superior court elect one of their number to sit as children's judge. He may appoint a referee to hear children's cases. It is preferable that the same person act as children's judge continuously. It is preferable that the person acting as juvenile judge should have legal training; but it is more important that he should be socially minded. A socially minded per-

<sup>13</sup> *Op. cit.*, p. 300.

<sup>14</sup> E. Belden, "Courts in the United States Hearing Children's Cases," Children's Bureau, *Pub.* 65, p. 42.

son without legal training is preferable to a legally trained person who is not socially minded.

Under the conditions here described, it is obvious that all sorts of persons, widely differing in experience and outlook, are called upon to perform the duties of the juvenile judge. No doubt most of them do the best they know how. Most of them do not serve long enough in this capacity to accumulate very valuable experience. The average length of time the judges have served in the juvenile court in St. Louis since 1903 has been not quite eleven months each.<sup>15</sup>

The most successful juvenile judges are those who serve in that capacity continuously and who perform no other function. Women employed as referees continuously have been very successful with children's cases. Miriam Van Waters reports that while Orfa Jean Shontz was referee of the Los Angeles County court, over six thousand matters were before the court and not one appeal was taken from her findings and recommendations.<sup>16</sup>

C. *Probation officers, social workers, and clinical equipment.* In 1918 less than half the courts in the United States hearing children's cases had a recognized probation officer.<sup>17</sup> The vast majority of these officers probably had no training for their work. Only 25 per cent of the courts in districts that were entirely rural had probation officers for juvenile delinquents.<sup>18</sup> In many of these the person employed had no other qualification for the office than that he or she was middle-aged, kindly disposed toward children or needed the salary.

Trained social workers in juvenile courts outside of large cities are comparatively rare. As a result, much work that should be performed by a trained officer falls upon the health worker, the Red Cross secretary or whatever other trained person happens to be working in the territory.

<sup>15</sup> E. H. Sutherland, *op. cit.*, p. 292.

<sup>16</sup> "The Socialization of Juvenile Court Procedure," *Jour. Crim. Law*, May 1922, p. 62.

<sup>17</sup> E. Belden, *op. cit.*, p. 13.

<sup>18</sup> *Ibid.*, p. 52.



The presence of psychologists in the juvenile courts seems to bear a direct relation to density of population. Seventy-seven per cent of the counties in the United States having cities over 100,000 population had facilities for mental examinations. In counties with cities from 25,000 to 100,000, court psychologists were found in 28 per cent. Seven per cent of the counties with cities from 5,000 to 25,000 were so equipped. In counties with no city over 5,000 in population, only one court out of every hundred had facilities for making mental tests. Of the entire number of courts hearing children's cases in the United States only 7 per cent had such facilities. When Miss Belden made her study in 1918, clinics were a part of the court machinery in only thirteen courts.<sup>19</sup> These figures paint the picture a little too darkly, for a considerable number of courts call in a psychologist from some neighboring educational institution in cases of obvious mental deviation, and many city courts have the hearty co-operation of free dispensaries in making physical examinations whenever they are desired. At that, however, it cannot be said that we have, as yet, even a remote approximation to a general use of the ideal juvenile court in the United States.

D. *Persistence of criminal court methods.* In spite of the ideals embodied in the juvenile court, many vestiges of criminal court procedure persist in its operation. Sutherland summarizes these as follows:

(1) The right to trial by jury is retained, due to the fear that the supreme court might otherwise find the law unconstitutional.

(2) Delinquency, while given a blanket definition by some phrases, is defined by some specific phrases, in imitation of the criminal law.

(3) Juvenile courts in their reports frequently classify offenses in terms of the criminal law, such as grand larceny, petty larceny, etc.

(4) Some judges use methods that are distinctly those of

<sup>19</sup> *Op. cit.*, pp. 63-65.



the criminal court, even of the mediæval criminal court, such as whipping, fining, and short-term imprisonment.

In addition to these survivals of criminal court practice, in the large cities, from eighty to ninety per cent or more of the "complaints" against delinquent children are filed by a police officer.<sup>20</sup>

E. *Absence of the social view-point.* One of the outstanding drawbacks of the juvenile court is the absence of the social view-point in judges and probation officers. By many judges and lawyers, the movement is looked upon as a fad forced upon the bar by meddling sentimentalists. Wherever this attitude is taken by a judge it is impossible for the juvenile court to function at its best. It is the spirit of the children's court, more than men or machinery, that makes for its success. The ideal children's court functions in close co-operation with many other forms of social work. If the social view-point is not held by the judge and his officers an effective liaison with relief, family welfare, health, and child-caring organizations is impossible. Miss Van Waters finds "the chief obstacles to socialization of the juvenile court procedure are lingering shreds of penal terminology and criminal law usage." Other obstacles are "obsolete thinking and unclear thinking. Socialization implies that judges and court officials are to be experts, experts with specific training and specialists in the art of human relations."<sup>21</sup>

7. *Proposals for modification of the juvenile court.* Even the most ardent friends of the juvenile court are not oblivious to its weaknesses. Two outstanding proposals for its modification are before the country. One of these is its identification with a "family court" or court of domestic relations. The other is that a great part of the work done by the children's court should be taken over by the schools.

A. *The family court.* The principal reason for the proposal to merge the juvenile court with a family court lies in the

<sup>20</sup> *Criminology*, p. 289.

<sup>21</sup> M. Van Waters, *op. cit.*, p. 69.

fact that family matters and adults are so frequently involved in children's cases, and, on the other hand, in cases of divorce, non-support, neglect and improper guardianship, which customarily come before magistrates courts or other formal courts, the welfare of children is frequently involved.

The arguments for such a consolidation are simple and convincing. It would simplify procedure. It would enable all of the interests to be considered by the same court. All of the facts would be collected by the same set of officers. The interests of old and young would be considered in a single decision. Conflict of opinion between judges and conflicts of authority would be avoided.<sup>22</sup>

It is objected that the return to formal court procedure would sacrifice some of the most valuable assets of the juvenile court. The objection could be overcome by a modification of the formality of a family court and by the retention to a great extent of the feature of privacy. Advocates of such a reform propose to transfer a large part of the work now done by the juvenile court to the schools.

B. *Social work in the schools.* Sutherland sums up the arguments in favor of transferring much of the work of the court to the schools as follows:

The juvenile court is doing an immense amount of administrative work at present which is extra-judicial and not properly the work of a court. This work includes such things as the administration of mother's pension laws, development of recreation work, and the education and training of children by probation officers. The probation officers, especially, are essentially case workers, who use education as their principal method. Even the institutions to which juvenile delinquents are committed are essentially educational institutions.<sup>23</sup>

The so-called unofficial cases are handled by what are known as case-work methods and constitute a large part of the social

<sup>22</sup> See E. J. Dooley, "Report of the Committee on Courts of Domestic Relations," *Nat. Probation Assoc.*, 1919, p. 114.

<sup>23</sup> *Op. cit.*, p. 302.



work of the juvenile courts. In 1922 the National Probation Association, through a committee, made a study of the juvenile court work in nineteen American cities. This committee found that in more than two-thirds of the cities more than half the cases were unofficial, and in more than a third of them over two-thirds of the cases were of this character.<sup>24</sup> Hegel found similar conditions existing in Minneapolis.<sup>25</sup> It is argued that this work should be done by the schools. Professor Hotchkiss advocated such a change in 1912, and in 1914 T. D. Elliot advanced convincing arguments in its favor. Agitation for the change has been more or less insistent ever since. Work of a similar character is being done in the schools in a constantly increasing amount. For a time this work was done largely by the attendance departments but the volume of social work in the schools has steadily increased in connection with health by the addition of the school nurses, mental condition through the development of mental testing and the psychiatric and child guidance clinics, and through social work in the homes through the addition to the school staff of the visiting teacher. Social work in the schools of St. Louis appears to have reduced the number of cases brought to the juvenile court by attendance officers by more than two-thirds in a period of about ten years.<sup>26</sup> The development of vocational work and the provision of ungraded classes and special rooms for backward and retarded children may be considered as a part of this movement within the schools.

It is urged further, in behalf of this change, that the schools can do this work more efficiently than the courts; that it can do this without the stigma which attaches to court experience; that cases can be taken in hand earlier and many of them can be prevented from getting to the stage which requires court interference; that the transfer of correctional institutions from

<sup>24</sup> T. D. Eliot, "The Unofficial Treatment of Children Quasidelinquent," *Natl. Probation Assoc.*, 1922, pp. 68-103.

<sup>25</sup> N. H. Hegel, "The Public School as a Little Used Agency for the prevention of Juvenile Delinquency," *Natl. Conf. Social Work*, 1921, p. 101.

<sup>26</sup> E. H. Sutherland, *op. cit.*, p. 303.



penal to educational auspices would be beneficial; and that such a change would enable the school to adapt itself more perfectly to the needs of the children.

Opposed to this change it has been argued that the schools lack the compulsory power to make much of this work effective; that much of the odium which now attaches to the courts would be shifted to the schools and bring them into disfavor and interfere with their regular function of education; that many delinquents are beyond the school age and out of its jurisdiction; and that school men are not fitted by their training for this sort of work.<sup>27</sup>

We appear here, however, to be dealing with a development rather than a reform. Undoubtedly we are going to witness a much greater and more general expansion of the social work program of the schools. This will result in a steadily increasing number of cases which now come to the juvenile courts being adjusted through school machinery. In this way it is likely that the unofficial work of the courts will be greatly reduced in time and more of their energies will be devoted to the more difficult adjustments in which the schools have been unsuccessful or which lie outside their jurisdiction.

8. *The influence of the juvenile courts on adult procedure.* After twenty-five years of experience with the juvenile court, it would be strange if there were not tendencies to extend something of the same method in the direction of adult procedure. In fact such a tendency has appeared, both in theory and to a certain extent in practice.<sup>28</sup> While it is possible and highly desirable that much of the formality and legal technicality which hamper the criminal courts may in the near future give way to simpler, more practical, and more scientific methods, there are certain distinctions between the delinquent

<sup>27</sup> For a discussion of the arguments for and against the plan see E. H. Sutherland, *Criminology*, pp. 301-307.

<sup>28</sup> On theory see M. Parmelee, *Criminology*, p. 407; Lindsey and O'Higgins, *The Beast*, p. 148; and J. H. Wigmore, "Obstructing the Efficiency of the Juvenile Court," *Jour. Crim. Law*, August 1922. Cited in E. H. Sutherland, *op. cit.*, p. 309.

and the adult criminal which cannot be overlooked. Attempts have been made in Colorado, (1909), Kentucky, (1908), and Iowa, (1913), to place the trials of misdemeanants in chancery or equity jurisdiction. Attempts to include felonies have been vetoed and Kentucky's law including contributory delinquency in equity jurisdiction was repealed after two years of trial.

With the technical problems involved in such a change we are not concerned here. It seems that nothing vital would be lost and much would be gained if we should adopt social investigations, treatment instead of punishment as the goal, informal procedure, secret or private sessions, and clinical examination into the offender's mental and physical condition in trials of adult criminals. To this end it might be pertinent to suggest that all persons having to do with criminals in the matter of determining their guilt and subsequent treatment should have some technical information and training comparable to what we expect of school teachers if not to that of lawyers and doctors. It may be that as a result of our practical experience with delinquents, we may become more intelligent in our dealings with criminals.

For bibliography see list following Chapter XIX.

## XIX

# THE NEW CONCEPTION AND TREATMENT OF CRIME

### I. FAILURES OF THE OLD SYSTEM

IN conclusion let us candidly face the question of the criminal. It is obvious that he does not fit into the social scheme. Either he *cannot* do so or he *will not*. Much depends on the reasons in either case. If he cannot adapt himself to the requirements of society it is very important that we should know why; if he is able and chooses not to do so it is just as important that we should know the reasons for his perversity. It is now apparent that a large percentage of our criminals are unable to adapt themselves to modern society. It is equally true that a portion of them might adapt themselves if they would but for some reason or other they refuse to do so.

Whether the criminal is perverse or pathological, the problem which confronts us now is *what we are going to do about it*. *Traditional theory and practice have brought us nowhere*. There is no hope of improvement as long as prevailing methods of dealing with criminals are perpetuated. The whole system is wrong from top to bottom. It is based upon erroneous theories as to the motives for behavior, and theological and metaphysical misconceptions regarding human nature and social relationships. It is time that we set to work upon some definite plan to substitute an intelligent program in its place. If there are technical difficulties in the way of its application, the plan should be comprehensive enough to provide for the removal of these. If this involves time, it is all the more important that



we should go about it without further delay. *There is absolutely nothing to be gained by waiting.* The present system could not be more effectively discredited if we perpetuated it for another century or so.

## II. THE NEED FOR A SCIENTIFIC SYSTEM

We should make an honest effort to be scientific in all of our dealings with the criminal. This, of course, would mean practically a complete revolution in our system of protection, with the possible exception of a part of our procedure in dealing with juveniles. To state the case briefly, *we need to put the entire matter of criminals and their treatment in the hands of specialists.* This is in line with the spirit of the time in which we live. Business and industry have committed themselves to specialists. They demand the most highly trained experts available and they pay them well for their services. Likewise in the professions we have come to set high standards. Lawyers, doctors and teachers must comply with rigid requirements before we permit them to practice. In two of the most important fields of human relationships, however,—in politics and social protection, we still act upon the absurd assumption that *any adult citizen is qualified to handle public affairs* including the protection of our lives, our persons, and our property against abnormal and anti-social beings. There is absolutely no valid reason why we should continue to act upon this assumption. The main reason why we do so, is because we have been doing it that way. Since that way has been such a disastrous failure, there is every reason why it should be abandoned.

## III. SHIFT OF EMPHASIS FROM CRIME TO CRIMINAL

The first important step to be taken in planning an adequate system of repression is to shift the point of emphasis from the crime to the criminal. We have seen how a beginning was made

in this direction by the modern school of criminal scientists. Practically all of the progress which has been made in the direction of a more intelligent handling of the crime problem in the last forty years has been the result of this shift. With this change in emphasis we have come to see clearly how erroneous our theories about responsibility, motives for crime and results of punishment were and are. It is now time to abandon the efforts to make conditions fit a set of theories and to devote ourselves with all the intelligence we possess to contrive a system to fit conditions as they exist. Several proposals for a scientific system of criminal procedure have been made in recent years.<sup>1</sup> All of these are based more or less definitely upon the proposition which is now clearly demonstrated by criminal science, namely, that the majority of criminals are pathological to some extent; that this pathology is predominantly in the direction of mental deficiency and ill health; and that those criminals who are not pathological in mind or body are defective in their attitudes toward society for some reason or other. In any event, the scientific system of dealing with criminals will be adapted to the criminal, whatever his reasons for committing crime may be.

The shift in emphasis from crime to the criminal involves sweeping changes in present methods of social defense, including the organization of the police, the collection of evidence, and in methods of going about securing the offender. It involves the entire process of identifying the offender with the offense. Finally, so far as procedure is concerned, it involves the entire process of treatment of the offender after his conviction.

In addition to these sweeping changes in social protection and in dealing with persons already delinquent, it involves shifting the point of emphasis from dealing with offenders to the much more important work of preventing delinquency by more scientific education and medical and mental diagnosis as well

<sup>1</sup> See especially M. Parmelee, *Anthropology and Sociology in Their Relation to Criminal Procedure*; P. A. Parsons, *Responsibility for Crime*; and H. E. Barnes, "Trial by Jury," *American Mercury*, December 1924.



as by more scientific law making and a certain amount of reorganization of the social system.

In sketching the outlines of a scientific program for dealing with the problem of the criminal, let us begin with society's initial reaction to a given crime and follow the case through the customary procedure and treatment, concluding with a summary of the more obvious and practical suggestions for anticipating criminal behavior as far as possible.

#### IV. SCIENTIFIC SOCIAL DEFENSE

Society's first line of defense is the police. Much of the success of a scientific program would depend upon their efficiency. Any program without a technically trained police or some efficient substitute for it would be inadequate.

Police schools similar to Vollmer's with some amplification of training and a longer period of study might in time be developed into definite departments of our State Universities, with practical training in connection with police departments in the larger cities similar to our present schools for social work training.

The present method of shifting men about on the force from one department to another should give way to the development of experts in the different lines of the service. The criminal department, of course, should be manned by policemen with special training for their work. It should include knowledge of criminals and their ways, methods of detecting criminals, the scientific collection and handling of evidence, and the making and handling of records of identification. Above all else, they should be trained to the point of self-confidence and have a professional pride and interest in their work. Compensation and security of tenure as well as the respect of the public should be such as to attract and hold capable men. It goes without saying that the service should be freed from political interference.

As Woods and Fosdick have insisted, the police force should ultimately participate in a general social program for crime



prevention.<sup>2</sup> A police force loyal to the public and incorruptible by the influences of vicious and criminal elements of the population would become a terror to evil-doers and be sure of loyal support of the community. The removal of the suspicion of corruption and the manifestation of skill and efficiency in the doing of their work would make the police the pride of the community. The admiration of youth could easily be shifted from the criminal to the officer of the law and the adventurous spirit of boys be turned from outlawry to law enforcement.

#### V. THE TASK OF IDENTIFYING THE OFFENDER

Let us assume that we are confronted with an individual who appears to be the perpetrator of a crime which has occurred. All of the evidence available has been accumulated and studied by scientific methods. Aside from certain details, society knows that something has happened, such as a murder, a burglary, a hold-up, an assault, a case of arson, or what not. What society wants to know, at this juncture, is whether the man in custody did whatever was done.

With the substitution of a scientific program of treatment of the offender for the present effort to prove the accused guilty of having committed the particular crime, with a certain predetermined punishment in view, some of the most serious complications of present court procedure would be removed. What society wants to know is whether the accused did what was done, not whether he can be proved to have done a particular thing of which he has been accused. What society wants to do is to protect itself from the recurrence of this or any other criminal act. It is concerned to know, first of all, whether the man is guilty. If he should prove to have done the thing in question, society then needs to know why and under what circumstances he did it. If this information can be secured, its next concern

<sup>2</sup> R. B. Fosdick, *American Police Systems*, p. 378; A. Woods, *Crime Prevention*, pp. 106 *passim*.

is whether the offender can be made worthy of liberty and a restoration of public confidence. If this cannot be effected, society must take steps to make itself secure against him for the future.

Present court procedure has had two things in mind; to determine the guilt of the accused, and to fix the nature and extent of the punishment. To accomplish these and at the same time protect innocence from injustice, the criminal courts have developed legal technicalities which as frequently as not prevent the accomplishment of one or all of their objectives. By reason of this fact, persons who function in such courts must have qualified themselves by learning all of the tricks and niceties of procedure in order to come successfully through the complicated labyrinths of a trial and satisfy all of the requirements of legal tradition. *Judges, attorneys, and court officials may do this successfully without knowing anything about the actual nature of crime and criminals.*

To date, there is practically nothing in the training of lawyers, some of whom become judges, which qualifies them for dealing with criminals. With the exception of finding out whether the man in custody is the one who has committed the crime which has occurred, *all the rest of legal procedure could be dispensed with without an iota of loss to society.* All of the facts in the case which society wants to know and must know if it is to deal with crime effectively, *can be ascertained by technicians without a particle of legal training.*

With the socialization of criminal procedure, the question of punishment can be omitted from consideration. With punishment goes much of the notion of guilt. There remain only the problems of making sure the person in custody is the offender, of determining what is best to do with him. These are jobs for technicians, for which the average judge, attorney, and juror are as unqualified as they are for the practice of medicine or the making of watches.

In the place of our present criminal trial, therefore, a scien-



tific program would substitute a group of men trained in criminology, sociology, and the technique of weighing evidence.<sup>3</sup> Their number should include psychiatrists and physicians, in order that the investigation should include a thorough clinical examination as well as the weighing of all the scientific and social evidence accumulated by the expert police. Both society and the accused would be far safer in the hands of such a group of specialists than either is at present in the customary jury trial.

The substitution of such a body with legal powers to determine the facts in the case for the present criminal court is probably not to be hoped for at the present or in the near future. No doubt we could accomplish something of the same result if we insisted upon the socialization of the legal profession and introduced the professional jury and the intelligent and non-partisan use of clinicians for the study and disposal of the offender. Such a program has the advantage over a more scientific one of being achieved piecemeal. It might pave the way for the ultimate adoption of an entirely scientific method.

The jury, however, as employed at present, has outlived its usefulness. It should be abandoned at once for a small group of paid technicians, trained to consider evidence and make scientific deductions from it. Such a change would have a salutary influence upon the criminal trial. Most of the cheap and reprehensible tricks of lawyers for befuddling jurors would be abandoned, for such a group of experts could not be imposed on in this manner. This would tend to speed up trials immediately and would, no doubt, eliminate other evils as well.

Social and clinical evidence should be given equal weight with "legal evidence" and informal procedure would provide a better opportunity for the investigators to weigh all of the factors in the case. The element of a contest, what Hobhouse calls "battle by purse instead of battle by person," should be

<sup>3</sup> P. A. Parsons, *Responsibility for Crime*, pp. 119-120. M. Parmelee, *Anthropology and Sociology in their Relation to Criminal Procedure*, chaps. IX, X.



eliminated. No one officially connected with the investigation should have any other interest in the outcome than the learning of the truth and the disposition of the case in accordance with the best interests of society.<sup>4</sup>

The proposal to provide a public defender in criminal trials who shall be equal to the prosecuting attorney is a make-shift to strengthen a weak spot in a faulty system. The prosecuting attorney should have no more interest in a conviction than he has in an acquittal. This would be true if the investigation were solely for the purpose of learning the facts. The presence of legal men at such a hearing, either as judge or attorney, should be solely for the purpose of keeping the proceedings legal.<sup>5</sup> Unless qualified by other than legal training, they should have no authority to influence the decision of the technicians or to determine the final disposal of the case.

## VI. SOCIAL TREATMENT OF THE OFFENDER

Let us assume that our case has progressed to the point where it has been determined, by scientific processes, that the man in custody is the perpetrator of the crime in question. In the course of the investigation we should have learned many things which we need to know. We should have learned the man's mental and physical conditions and their relation to his crime. If a correction of his condition gives hope of his restoration to society it should be undertaken. Whether his menace to society is due to mental or physical condition or his attitudes, he should be restored to society when the causes of his anti-social behavior have been corrected, *and not before*. Those offenders whose physical or mental condition or anti-social attitude cannot be corrected *should be permanently segregated regardless of the gravity of the offense* which brought them into the hands of the law. The sole object of such segregation should be the protection of society. The idea of pun-

<sup>4</sup> and <sup>5</sup> P. A. Parsons, *op. cit.*, p. 121; see also, E. H. Sutherland, *Criminology*, pp. 274, 275.

ishment, in its traditional form, should not enter into the treatment.<sup>6</sup>

It is likely that segregation would have to be resorted to only in a relatively small number of cases. Other means should be resorted to for treatment of those persons whose menace to society is not sufficiently great to warrant the extreme measure of permanent detention.<sup>7</sup> Pathological individuals would find asylum in institutions for the insane and feeble-minded. Many diseased criminals would be cured. Hosts of minor offenders with wrong attitudes could be adjusted to society with proper supervision and be required to make some amends for the damage which they have done to individuals. Proper precautionary measures taken by the schools, the juvenile courts, social and health workers and the police should greatly decrease the number of habitual offenders and lessen the need for extreme measures.

## VII. ADAPTATION OF PENAL MACHINERY

The substitution of treatment for punishment would involve an adaptation of our penal machinery to the new methods. Places of detention will be necessary for persons awaiting a disposal of their cases and during the period of investigation. Some institution similar to our workhouses will probably be necessary for the supervised employment of hosts of irresponsible and inefficient persons. Wherever possible, treatment should be outside of an institution, with regulated and supervised behavior, similar to but much more proficient than parole as generally employed. Probation should be greatly improved and extended.

For those offenders whose menace to society is grave, custodial treatment and observation will be necessary for a relatively long period of time. New York has long had under con-

<sup>6</sup> P. A. Parsons, *op. cit.*, p. 65. Also E. H. Sutherland, *op. cit.*, pp. 350-359.

<sup>7</sup> *Ibid.*, Parsons, pp. 156-157; Sutherland, pp. 353 f.



sideration a plan for the organization of its prisons as follows.

From the community all felons would be sent to an observation prison for an indefinite period. The organization of this prison should consist of the administrative department, a medical department, a psychiatric clinic, departments for educational and vocational guidance as well as religious guidance; the administrative department, after a sufficient period of observation, to have power to make a disposition of the offender's case, the following possibilities being open.

1. Normal prisoners capable of learning a trade to be sent to one of two industrial prisons.

2. Normal persons suited to agriculture to be sent to a farm prison.

3. Insane delinquents to be sent to a prison for the criminally insane.

4. Defective delinquents to be sent to a custodial institution.

5. Psychopathic delinquents to go to the custodial institution for the defective or to the prison for the criminally insane.

All commitments to these specialized prisons to be indeterminate with the possibility of release to the general community through parole agencies when it is considered practicable. Where his release is considered socially dangerous the individual is to be restrained permanently.<sup>8</sup>

The success of such a program would depend upon the extent to which it might be carried out scientifically. In each of the specialized institutions the staff should be composed of persons qualified to handle the particular type of offender committed to it. The use of the parole as a practical method of emptying the institutions to make room for more admissions would, of course, vitiate the entire program. In such an event a program of this character would have little advantage over the present system except the careful observation of the prisoner in the receiving prison and the segregation and specialized treatment of the pathological and defective offenders.

<sup>8</sup> An admirable discussion of this plan will be found in B. Lewis, *The Offender and His Relations to Law and Society*.



## VIII. MEASURES LOOKING TO THE PREVENTION OF CRIME

The time has passed when informed men look for a solution of all of society's problems through some simple scheme of social or economic reorganization. While an effective program of crime prevention might, in the long run, approach a reorganization of society, there is no simple and immediate method of bringing it about. An appreciable and highly effective change could be brought about in existing practices, however, which, barring the development of further disintegrating factors, might be expected to accomplish a great deal in the direction of crime prevention. The extension and improvement of the methods of dealing with delinquents; the expansion of the social work program of the public schools; the scientific development of community organization and recreation; a more adequate program of child care, family case work and social health work, are all measures which involve only the development of social work programs which are already under way. If we add to these the development of a scientific system of social education, a scientific system of law making, and a method of socializing the organs which influence public opinion, we ought to be able to make the existing social and economic order function with far less friction between the individual and society. Nothing has been suggested here which is not well within the range of possibility in the relatively near future if we set ourselves to its accomplishment.

*1. Improvement and expansion of the methods of dealing with delinquents.*

The juvenile court is worthy of a much more honest trial than it is getting at the present time. The organization of such a court in all communities and its extension to all children's cases, would no doubt be a long step in the desired direction. While this is being done, it seems reasonable to believe that similar methods might be applied equally successfully to all offenders, with few exceptions, up to the age of twenty-

one or even older.<sup>9</sup> Informal procedure and effective probation work should bring equally satisfactory results for many classes of adult offenders. Everything possible should be done to avoid the use of present penal machinery.

## *2. Social work of the public schools.*

The production of a socially satisfactory product should be the goal of public education. The schools have a chance at all the children from a tender age until a fair degree of maturity is reached. The upper limit could be raised if necessary. During this period school officials are in position to detect almost all impediments to normal development. They are in position, also, to remove or counteract nearly all of these if they were given the authority and the means to do so. A society which allows a defective child to pass through eight or ten years of school without detecting his defect and taking measures to correct or counteract it can hardly lay claim to being intelligent. It heartily deserves any anti-social behavior which may result from this neglect of its opportunity.

The impediments to normal development are readily classifiable. They are physical, mental, or social. An adequate program of education should include provision for meeting situations created by any one of these. Physical defects may be remedied or the child's education adapted to them in such a way as to prevent them from causing disaster in his later years. Mental inferiority is incurable and should be met with institutional treatment or adequate supervision in the community. Psychiatric disturbances may be anticipated to a considerable extent and the patient saved from a life of wretchedness and possible tragedy. Vocational guidance and vocational training can turn many pre-delinquents into ways of social usefulness. Health work in the schools is designed to enable the child to make the most of his educational opportunities and to secure for him a normal physical development. An adequate social service program in the schools should make provision for an

<sup>9</sup> E. H. Sutherland, *op. cit.*, p. 309 and references.



extension of its service into the homes of the children wherever necessary. The visiting teacher and the school nurse should detect unfortunate economic, psychic, moral, health and social conditions there which are interfering with the child's progress in school. Experience has taught us that most frequently such conditions can be remedied through the proper mobilization of the community's social work resources, including the juvenile court officers and the police.

Unfortunately, most communities look upon the introduction of such work into the schools as "frills" which interfere with the work of education and eat up the tax-payer's money. Some day we shall be intelligent enough to see that it is cheaper in the long run to spend our money for prevention than it is to spend it for correction and custodial treatment. The nation's budget for crime has been shown to be about three times its expenditure for education.<sup>10</sup> The reversal of these figures would bring salutary results without costing us an additional penny. It is probably safe to assert that the trebling of our budget for scientific education should reduce the cost of crime by two-thirds. This does not take into consideration the social and spiritual results which would accompany this transition. An expansion of the social work program in the schools would be desirable even if it had to be secured at the expense of a part of our present cultural program. If society has to choose between a socialized individual a little less informed and a more learned person without a proper sense of social responsibility it had better take the former. It has only been a few generations since the majority of people possessed little of the knowledge which our children are being taught in schools today, yet social solidarity was probably greater then than now.

### *3. Community organization and recreation.*

There are two outstanding facts which have come to us as a result of the development of juvenile court work. Organized and supervised recreation keeps down juvenile delinquency; and

<sup>10</sup> See chapter I, pp. 6-8, and references.



vicious neighborhoods and "gangs" are among the most prolific causes of youthful misconduct. We have only begun to provide facilities for recreation under properly supervised conditions. Some program must be devised to furnish diversion and wholesome recreation for every city child throughout the year. The municipality can go much farther than at present and it should be supplemented by group leadership organizations until every child has opportunity to participate in the activities of a well organized and supervised group.

The field of providing entertainment and diversion for the youth and adults should not be allowed to remain in undisputed possession of commercial enterprises. The organization of our business and industrial life is now such that the leisure time of most adults requires a very restricted and artificial form of recreation. The solidarity of social groups requires that they should produce their own diversions to a much greater extent than at present. The wedge that is being driven between the young and the old by our system of education and separate amusements for the young and for adults is threatening the very existence of our primary groups,—the family, the neighborhood, and the institutions of religion.<sup>11</sup>

Community organizations for the conservation of community values is in its infancy. There are, however, definite beginnings which ought to be greatly extended. The work of parent-teachers organizations has great possibilities for bridging the gap between home life and the schools. Community service organizations are promoting community recreation and neighborhood clubs of various kinds. The community house movement has a wholesome ideal and there are great possibilities in the community church movement. All of these are still hampered by social distinctions and American individualism but they are demonstrating their worth and increasing in strength and efficiency. There is no alternative. Either we must find ways of preserving group solidarity or suffer the consequences.

<sup>11</sup> P. A. Parsons, *Introduction to Modern Social Problems*, chap. XI, and pp. 97 and 150.

of still further disintegration of our social bonds. Professional, commercial and industrial groups are not sufficient to do the things which must be done. We must have groups that stabilize the family and the neighborhood and keep the young and the old constantly associated through a community of interests.

#### *4. Social work affecting children.*

In some respects, at least, the child is coming into its own. At the moment, child health work occupies the center of the social work stage. General child welfare is rapidly coming under efficient state management. Family case work, or relief, is developing a technique which is based upon the social value of the home.

Unfortunately child welfare work and family case work do not take a hand in the affairs of the child until rather desperate circumstances have been reached. Health work is the only one of the three which is forging into the preventive field. The expansion of the social work programs of the schools and such pre-delinquency work as is being done by juvenile protective associations are needed to anticipate many of the problems which now come before child-caring bodies and public welfare bureaus. A greater part of juvenile delinquency arises from conditions which can be anticipated and nearly all cases have a period in which preventive treatment may be undertaken with considerable promise of success. It is more intelligent to cultivate the soil where the seeds of crime are sown than to wait and deal with the ripened product.

The average child who enters upon a career of delinquency has been known as a pre-delinquent by the workers of one or more of our social work agencies months or sometimes years before he falls into the hands of the authorities. A community which does not make provision for anticipating trouble in such cases cannot be said to be properly organized for either child welfare or social protection.



IX. MORE GENERAL MEASURES LOOKING TO  
CRIME PREVENTION

We have been considering means of crime prevention which involve the amplification and extension of work which is already being done. There are several measures of a more general character which deserve careful consideration. If the question of the criminal is to be answered satisfactorily we shall need to take a new attitude toward the scope and purpose of public education, toward our processes and machinery for law-making, and toward the organs which create and influence public opinion.

1. *The socialization of education.*

Our elaborate system of education, like legal and penal machinery, has developed upon a theoretical basis. Democracy has staked everything upon compulsory education, but we have not taken the precaution to find out what kind of education is safe for democracy.<sup>12</sup> In the present state of the home and the church, the task of socializing the child devolves primarily upon the school. This involves a task for which the schools have not been organized nor their instructors and supervisors properly educated. For the time being, however, it must undertake this task even at the sacrifice, if necessary, of its cultural and utilitarian ideals. Our youth must be socialized or society will go to pieces. Youthful and sophisticated individualism is dynamite for social destruction. Education in and for itself alone is a dangerous thing. *It must carry with it ideals of social responsibility or it is more of a liability than an asset.*

It cannot fairly be said that education has failed to socialize the young because it has never tried to do so. To date, however, after a century of unlimited opportunity, it has failed

<sup>12</sup> See E. H. Sutherland, *op. cit.*, pp. 627-630.



to produce a coherent society or to counteract the disintegrating influences of a materialistic civilization. Nevertheless, it is by no means clear that it may not do so. In a very real sense, *the fate of civilization is in the hands of its school-teachers.*<sup>13</sup>

Just how to adapt education to the task of socializing the young is, at present, an unsolved problem. It is something to know that the need is realized and that able men are working to find a solution. The problem seems simple. But we need to know just what type of individual is or will be socially satisfactory in the coming civilization; and we need to know what type of education will produce that individual.<sup>14</sup> If the method is to teach social sciences we have scarcely made a beginning. Excepting history, the average high school graduate who enters college offers one-thirtieth of his entrance credits in social studies.<sup>15</sup>

Present proposals to blind our eyes to scientific truth and teach only those things which agree with traditional theological notions offer no solution of our problem. Fair civilizations have been built *in* ignorance but a successful one cannot be founded *on* ignorance when knowledge is available. Nor can we hope to reestablish the simple communal conditions of other days in the midst of the mechanical devices of our age. We must adapt ourselves to the physical conditions imposed by science and invention or be destroyed by them. Modern science has thrust man into a mechanical world in which his machines threaten to overwhelm him. How to preserve and create spiritual values in such a world is a serious problem, but we must solve it or perish. Education offers the only solution.

While these lines are being written a lad from a neighboring town lies in the Multnomah county jail. He hired a man to take him to another city in an automobile. On the way he thought he would like to have an automobile. It occurred to

<sup>13</sup> For an extended discussion see H. G. Wells, *Salvaging Civilization*.

<sup>14</sup> A good discussion will be found in C. A. Elwood, *The Social Problem*.

<sup>15</sup> E. H. Sutherland, *op. cit.*, p. 629.

him that a simple way would be to kill his driver and take the car he was in. He did so. There had been nothing in his education to counter the suggestion when it arose in his mind. Now he is in jail and we shall probably hang him. But that does not solve the problem.

## 2. *Scientific law-making.*

We have said that we are still working on the assumption that any adult is qualified to handle public affairs. This is in a large measure responsible for the situation in which we find ourselves with reference to the criminal. Natural laws work because they are founded upon fundamental principles. Social laws have worked in the past because ages of social experience have worked our customs around to bases of natural laws. Under the complicated and artificial conditions of industrial civilization these simple and rudimentary regulations have failed to meet the situations which arise. When these failures occur we gather together, by the crudest of political methods, an aggregation of farmers, small business men, and the henchmen of merchants, manufacturers and bankers, and adopt stop-gap devices to meet particular situations. These work badly and we adopt some more of the same kind, mostly without the vaguest notion of the nature of laws and the social institutions, processes, and forces which make laws necessary or effective. If we employed the methods in business or industry which we employ in legislation and government the business and industrial world would collapse almost over night.

The remedy for lawlessness is not more laws. In fact, lawlessness tends to increase with the multiplication of regulations. The remedy lies, rather, in scientific legislation founded upon correct principles, and in the development of right attitudes of the governed toward law as such.<sup>16</sup> Laws founded on correct principles are produced by our legislatures only by acci-

<sup>16</sup> R. Pound, "Inherent and Acquired Difficulties in the Administration of Punitive Justice," *Proc. Amer. Sci. Assoc.*, 4: 226, 1907. E. Freund, "The Problem of Intelligent Legislation," in the same journal, p. 72.



dent, and such accidents are rare. The making of laws is a task for experts, and up to the present we have not employed experts for this purpose except in an advisory capacity. When so employed their advice is seldom followed.

The creation of a scientific code of laws and the education of individuals to have a proper attitude toward them, through an appreciation of their nature and their necessity, would provide an effective barrier to the mounting disrespect for law.

### *3. Socialized organs for shaping public opinion.*

Free speech and a free press may be considered the bulwarks of democracy. But most of our speaking today is done in ignorance and the boasted free press has become largely the mouthpiece of interests, commercial, industrial, political, even fanatical. Most of the talking and the greater part of the printing of the present day are aimed at specific objectives, almost none of which are social. It is absurd to expect "public opinion" to be "enlightened" under these circumstances.

Society has a right to insist that all speaking and all printing bearing on human relationships shall be socially sound, just as it has a right to insist upon clean amusements and clean streets. The public is no more capable of choosing its reading matter than it is of choosing clean drinking water or clean milk. The assertion that the average man has the opportunity to read everything and the capacity to detect the true among the false is balderdash. It is vicious and dangerous to teach such things to our children.

The avenues of influencing public opinion are public property. It is an unwise state which permits their prostitution in the interests of individuals or groups. The use of the free press for purposes of vicious propaganda is as criminal as the use of mails to defraud.

The remedy lies only partially in censorship. A legitimate field of philanthropy is the provision of a strictly scientific, efficient and up-to-date but absolutely non-partisan and unbiased news service. It is as essential to society as health or



scientific research. A fund equal to the Rockefeller Foundation would be sufficient to give it a thorough trial.

But we need not wait for the realization of this Utopian dream. We are interested in the creation of a social attitude toward crime and conduct in general. Unwise news-paper publicity and the play upon crime, vice, and profligacy in literature tend to make these things attractive.<sup>17</sup> Much of modern literature is filthy and vicious in the opinion of persons absolutely free from the influences of the Puritan tradition. It is a reflection upon our intelligence when we permit our young people to read such matter and then punish them when they attempt to imitate the heroes and heroines. Much of modern literature is filth and few of us have the courage to call it such. Until we have that courage it will continue to besmirch many who read it.

If adults have vile minds and want to revel in muck, maybe it is the part of wisdom to let them do so. At any rate let us turn our attention for a moment to what passes for sound reading for our boys and girls. Let us run our eyes over the long tables in the department stores from which ten or a dozen volumes will come to our boy and our girl from their aunts and uncles and cousins next Christmas. Wild, absurd, phantastic, and impossible animal stories; impossible and preposterous or uninteresting and silly stories of adventure; stupid narratives of colorless boys and girls filled with vapid conversation without plot or purpose; and scarcely a noble, thrilling, inspiring or social theme in the entire collection. Society would do well to hire able and inspired authors outright and put them to work writing books based upon social themes for our boys and girls, in which the plot should be at least a little more elevating than the perpetual baffling of the ambitions of an impossible wolf to nibble the ears of a preposterous rabbit.

<sup>17</sup> W. I. Thomas, "The Psychology of the Yellow Journal," *American Magazine*, March 1908; F. Fenton, "Influence of Newspapers upon Crime," *Amer. Jour. Sociol.*, January 1911; and E. H. Sutherland, *Criminology*, pp. 166-167.

Æsop and Grimm rendered a great service to the race. The "kick" in the story lay in the moral attached. They have furnished us with an abundance of themes but in modernizing them we should see to it that the moral is not left out.

#### X. THREATENED COLLAPSE OF SOCIAL CONSTRAINT

Modern society is threatened with the collapse of social constraint. In the past, the criminal population has been made up of perhaps one or two per cent who have been impervious, either temporarily or permanently, to the subtle influences by which individuals are held back from unsocial and anti-social conduct. Of those influences, the law is only a formal and fractional part. The powerful force which normally restrains irresponsible action is the fear of losing caste in the eyes of others, especially that relatively small group whose good opinion is highly prized.

In the past, the desire for approbation, has been supplemented, for the benefit of the weaker and the more violent members of the group, by the fear of penalties. We have seen how this fear is chiefly useful in restraining potential offenders.

The desire for approbation, the approval and good opinion of one's group, is the main force upon which society has depended to secure satisfactory behavior. If this breaks down, law and the fear of punishment are futile.

There are two important conditions under which this necessary social force disintegrates or fails to get desired results. Both of these conditions are prevalent in modern society and are increasing rapidly in extent.

##### *1. The restraining influence of disapprobation breaks down when an individual loses contact with a group.*

The man who has broken with all normal social connections ceases to care what any responsible group thinks about him. All tramps, hoboes and bums are either potential or actual criminals. We have seen how certain conditions in our social and



industrial life are steadily increasing the number of "broken men" who have no contacts with family, locality, or stable social group, whose contacts with industry are "casual" and whose political activities are nil or venal.

Society must contrive somehow to prevent this wholesale detachment of individuals from social relationships.<sup>18</sup> If this is impossible extreme measures should be taken to keep the number of casuals reduced to a minimum. Even this minimum must be properly regulated and accorded much more intelligent treatment than they receive at present.

*2. The morals of groups may deteriorate to the point where an anti-social individual may retain caste.*

In fact, the individual who has entirely lost his desire for caste is rare. Life would be absolutely intolerable without it. Even the hobo must have caste with other hoboes. The criminal seeks the associations of criminals and vicious persons because he has caste there. When an individual has established relationships with an anti-social group he must commit crime to retain caste. The vicious thing about the "gang" is that the member without criminal propensities is driven to commit crime to retain his standing with the group.<sup>19</sup>

But the most sinister aspect of the present situation appears when an individual in good standing in the community discovers that he does not lose caste with his group by unsocial or anti-social behavior. Where the public conscience has become so obtuse that the unsocial member is tolerated and can retain congenial associations, the most important barrier to anti-social conduct has been removed. An individual without normal respect for social requirements will take a chance with the law if he can "get by" with his friends. Even if the friendly

<sup>18</sup> For discussions of this problem see C. Parker, *The Casual Laborer and Other Essays*, and N. Anderson, *The Hobo*.

<sup>19</sup> An excellent collection of material and references will be found in E. H. Sutherland, *op. cit.*, pp. 154-157.



associations are jeopardized by unsocial behavior the restraining influence of their good opinion is dulled if there are other groups to which he can turn for congenial contacts.

We are now harvesting a crop of human beings who have not been equipped with definite moral and social standards. There is no sharp line of demarcation between right and wrong, between good and bad. Society shades imperceptibly from the most virtuous and upright to the dissolute and characterless. The grosser satisfactions are open to all classes alike. The successful bootlegger drives the most expensive automobile made. His wife wears the most fashionable and expensive clothes and goes covered with jewels. They live in a mansion with servants. Their children are popular in high-school and go to exclusive colleges. The nicer distinctions are made by a constantly decreasing number of persons, because we are not taking the trouble to teach people how to make them.

The law is a crude device for restraining conduct. Only the stupid and impulsive, the poor, and the weak violate it. The clever and the rich can gratify their unsocial and anti-social desires to a great extent by extra-legal means, or, in many instances, by open defiance of the law. Anti-social mobilizations of power such as criminal political organizations may be strong enough to afford members protection against the authority of the state.

The disintegration of the social utility of approbation may be expected to continue until society takes effective steps to provide its members with definite standards of conduct, and manages to make life intolerable for those who do not conform to them. The question of the criminal will not be solved as long as proper safeguards are not provided against the pathological members of society, and as long as those without satisfactory attitudes toward society can enjoy a relatively satisfactory existence at or near their accustomed social level.

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## A NOTE ON THE TYPE IN WHICH THIS BOOK IS SET

*This book is composed (on the Linotype), in Scotch. There is a divergence of opinion regarding the exact origin of this face, some authorities holding that it was first cut by Alexander Wilson & Son, of Glasgow, in 1837; others trace it back to a modernized Caslon old style brought out by Mrs. Henry Caslon in 1796 to meet the demand for modern faces brought about by the popularity of the Bodoni types. Whatever its origin, it is certain that the face was widely used in Scotland, where it was called Modern Roman, and since its introduction into America it has been known as Scotch. The essential characteristics of the Scotch face are its sturdy capitals, its full rounded lower case, the graceful fillet of its serifs and the general effect of crispness.*



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